13.11.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG alongwith Faiz Muhammad, Assistant for the respondents present. Arguments heard and record perused.

This appeal is disposed of as per our detailed judgment in connected service appeal No: 678/2013, entitled "Sher Zada Versus the Director Health (FATA) Department, Peshawar and another". Parties are left to bear their own costs. File be consigned to the record room.

Member

ANNOUNCED 13.11.2017

Mik

13.12.2016

Counsel for the appellant and Mr. Said Muhammad, Head Clerk alongwith Additional AG for the respondents present. Representative of the respondents submitted before the court that record of the appellant is available with the Agency Surgeon Officer and he will produce the same before the next date. Representative of the respondents is directed to produce the appointment order of the appellant alongwith salary issued to him and other related documents. To come up for record and arguments on

 $26 \cdot 4 - 12$  before D.B.

(ASHFAQUE TAJ) MEMBER

(MUHAMMAD AAMIR/NAZIR) MEMBER

Hertroman wethering

20.04.2017

Counsel for the appellant present. Mr. Said Muhammad, Head Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Representative of the respondent-department submitted record which is placed on file. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.

(Ahmad Hassan) Member (Muhammad Amin Khan Kundi)

Member

12.07,2017

Counsel for the appellant and Asstt. AG deposition the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.11.2017 before the D.B.

(Gul Zeb Khan) Member(E) (M. Amin Khan Kundi) Member(J) Assistant Litigation Officer alongwith Addl: A.G for respondents present Rejoinder submitted Learned counsel for the appellant requested for adjournment that due to rush of work he could not be prepared the arguments. File to come up for arguments on

01-01-2016

Member.

Member

01.01.2016

Clerk to counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Assistant AG for respondents present. Arguments could not be heard due to incomplete Bench. To come up for arguments on 27.5.2016 before D.B.

, –

Member

27.05.2016

Counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: AG for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 28.9.2016 before D.B.

Member

Membe

28.09.2016

Counsel for the appellant and Addl. AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 08.02.2017 before D.B.

Member

Chairman

13.01.2015

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with Addl: A.G present. Another request for submission of written reply/comments was made despite the fact that last chance was extended to the respondents on the previous date.

It is noted with concern that the government functionaries do not pay due attention towards direction of the court despite the fact that they are public servants and obliged to adhere to the orders of the Court including defending the interest of the government. Let the respondents be informed that in future, concerned authorities are to be dealt with strictly in accordance with law.

Last chance is extended with the direction to the respondents to submit written reply/comments on 16.01.2015.

**9**.7 Chairman

12. 16.01.2015

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents present. Comments submitted. To come up for rejoinder as well as final hearing/arguments before D.B on 9.7.2015 alongwith connected appeals No.678, 679, 680,681, 682,683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693,694,695,696,697,698,699,701,702/703 of 2013.

Chairman

# BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 682/2013

Mr.	Hashim Faraz Pharmacy Technician	
	***************************************	Appellan

### Versus

Para wise joints comments on behalf of respondent No. 1.

### Preliminary objections

- That the appellant has no cause of action/locus standi to file the present appeal.
- 2. That the appellant is estopped by his own conduct to file the instant appeal.
- 3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
- 4. That the instant appeal is bad for mis joinder & non-joinder of necessary parties.
- 5. That the present appeal is barred by law.
- 6. That the appeal is not maintainable in its present form.
- 7. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed

#### Respectfully Sheweth;

#### **ON FACTS**

- Incorrect, neither any posts were advertised nor the appellant was selected by the Departmental Selection Committee. Moreover, the appellant have not attached appointment order or NIC with the appeal.
- 2. Incorrect, the appellant has not been appointed nor did he perform any duty.
- 3. Incorrect, the official concerned has never been paid any salary as he has not been appointed.
- 4. Incorrect, no Departmental Appeal has been made.

B - 12

16-1-15

### **ON GROUNDS**

- **A.** Incorrect, the appellant has not been appointed so he is not entitled for salary.
- B. Incorrect, as per Paras mentioned in the facts of the reply.
- **C.** Incorrect, the appellant has not been appointed nor did perform any duty therefore, not entitle for salary.
- D. Incorrect, as per paras mentioned above.
- E. Incorrect, as per paras mentioned above.
- F. Incorrect.
- **G.** No comments.

It is therefore most humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

Respondent No. 01

Director Health Services (FATA FATA Secretariat, Peshawar

# BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 682 /2013

Mr. Has hem favez VS Director Health (FATA) & anthers:

### REJOINDER ON BEHALF OF APPELLANT

### **RESPECTFULLY SHEWETH:**

### **Preliminary Objections:**

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

### **FACTS:**

- Incorrect. The appellant was appointed as Pharmacy Technician (Dispenser) in BPS-9 vide order dated 27-3-0/2 on the proper recommendation of the Departmental selection Committee. Moreover, the appellant attached Service Book with the appeal, wherein page 4 A it is clearly mentioned that the appellant was appointed on dated 27-3-0/2. Furthermore many staff of para-medics are appointed against other post which are mentioned in notification dated 30.9.2011. Similarly many employees are drawing pay/allowances w.e.f 1.7.2013 to 31.10.2014 which are also working against other posts. Further more the documents annexed by the appellant is genuine and not forged.(copy of the notification dated 30.9.2011 and allowances w.e.f 1.7.2013 to 31.10.2014 are attached as Annexure-R1&R2)
- Incorrect. The appellant was appointed as Pharmacy Technician (Dispenser) in BPS-9 vide order dated 22-3-012 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil

servant, which is evident from performance certificate which is attached with the appeal.

- Incorrect. The appellant has been paid salary up to August 2012 by the concerned official. (Copy of salary slip of August 2012 is attached as Annexure- R3)
- Incorrect. The appellant has filed departmental appeal which is attached as D on page 6 with main appeal. Besides that the appellant and other colleagues had also filed a joint application /appeal which was properly endorsed and reported back by the concerned office. The denial of the respondents is thus not tenable mere by denying that fact. (copy of joint Appeal and school back by the concerned office are adached as R 4 and R 5)

#### **GROUNDS:**

- A- Incorrect. The appellant was appointed as Pharmacy Technician (Dispenser) in BPS-9 vide order dated 27-3-0/2 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil servant and has paid salary up to August 2012 by the concerned official and after September 2012 stoppage of monthly salaries of the appellant and not taking action on the departmental appeal of the appellant is against the law, rules, norms of justice and material on record. Therefore not tenable and liable to be set aside.
- B- Incorrect. While para B of the appeal is correct.
- Technician (Dispenser) in BPS-9 vide order dated 27-3-012 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil servant and has paid salary up to August 2012 by the concerned official. Therefore the appellant is entitled for salaries after September 2012 till date as the appellant is still in service and has not been terminated so for.
- D- Incorrect. While para D of the appeal is correct.
- E- Incorrect. While para E of the appeal is correct.
- F- Not replied according to para F of the appeal. Moreover para F of the appeal is correct.

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

APPELLANT

Through:

( M. ASIF YOUSAFZAI ) ADVOCATE, PESHAWAR. &

(TAIMUR ALI KHAN) ADVOCATE, PESHAWAR.

### **AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT

Me Soland Sul Colin La Sun Jose Colon La Colon L Enles/ de copie (dus) sielléle de - dise BOD ON GOOD BION & BOND ENVIOLENCE WAS COM Opin to mind on in in the sea this will sorial led weight on the windustor find White soir out I have welles builting Les Cos Vicinil Look of Colo of AS MAR Elec mille مرزاده جان وعمره المي مريد المارس لرمام والمزر(25) · Lo La la la la Comia O م الموليد ومن سكرى ال ورس العد لسالم Sport Care and tell portured of the formal o

18 2014 01:4 : GEBYCY SURGON-NUA MOHMAND ΝÜ To The Director Health Services. FATA Warsak Road Peshawar Subject. Memo . Reference your office ther bearing endst. No.4213rDHS/FATA dated 10/03/20 on the subject noted above. I have the honour to state that as per checking the record of this office. there is no such record available of me officials individual concerned like their appointment orders. service books, health & age, even the dispatch register of that time However photo copies of their service books along with service appeals lodged them in Khyber Pakhtunkhwa Service Tribunal Peshawar agains Fyour good office as well as the of the undersigned, received through Mr Akhtar Nawaz elder brother of Dr Rahim Nawaz the them agency Surgeon. This office has checked all the service books with the pay bills for the month of May 2012. If has pointed out that there is a huge different between the pay fixed in their service by and pay I allowances drawn in the payibles. Keeping in view of the above it has also pointed out that their appointmention were issued as a Malana Supervisor BPS-09 against the vacant post of LHVs and Dispensers du ban period with out advertisement / conducting of proper interview. It is a main cause for withdray their names from monthly cay bits 10/Dr. Azam Waz ... Ex-Agency Surgeon w.e. from 01/09/2012. Agency Surgeo North Waziristan Miranshah



6.3.2014

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments on 5.6.2014.



5.6.2014

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. Request for further time made on behalf of the respondents due to security situation prevailing in the area. Yet another chance is given for written reply/comments alongwith connected appeals on 11.9.2014.

11.9.2014

Counsel for the appellant and Mr. Kabirullah Khattak, AAG the respondents present. Neither representative of the respondents is present nor written reply has been furnished despite yet another chance given for the purpose on the previous date. On the request of learned AAG, a last chance is given for written reply/ comments alongwith connected appeals on 13.1.2015.

04.10.2013

Counsel for the appellant present and heard on preliminary. Contended that the appellant has not been treated in accordance with law/rules. The appellant took over charge w.e.f 04.12.2011 since he performed his duty as verified by respondent No.2 vide page No.6 of the instant appeal but he has not paid monthly salary. He filed departmental appeal on 02.01.2013 which has not been responded with statutory period of 90 days, hence the present appeal on 18.04.21013. Points raised at the Bar need consideration. The appeal hearing subject admitted regular objections/limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 05.12.2013 for submission of written reply.

Member

04.10.2013

This case be put before the Final Bench\_

for further proceedings.

Chairman

05 .12.2013

Clerk of counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. To come up for written reply/comments on 6.3.2014

Chairm*a*n

18.6.2013

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 20.8.2013.

Keader

20.08.2013

No one is present on behalf of the appellant. Case is adjourned. To come up for preliminary hearing on 04.10.2013..

Tember

## Form- A FORM OF ORDER SHEET

Court of_		•
Caśe No	682/2013	

	Čourt of Case No	
- 		
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/04/2013	The appeal of Mr. Hashim Faraz presented today by Mr. M. Asif Yousafzai Advocate may be entered in the
		Institution Register and put up to the Worthy Chairman for preliminary hearing.
		REGISTRAR
2	24-4-2013	This case is entrusted to Primary Bench for preliminary
		hearing to be put up there on $\frac{18-6-30}{3}$ .
		CHAIRMAN
•		
	A .	
•		
٠.		

### REFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 682 2013

Hashin 2m12

V/S

Agency Surgeon (NWA) & Others

### INDEX

S.No	Documents	Annexure	Page
1	Memo of Appeal		1-3
.2	Appointment Order Service	Α	04 - 4-A
3	Arrival Report	В	05
4	Performance Certificate	C	06
5	Departmental Appeal	D	07
6	Wakalat Nama		

Appellant

Hashin.

Through:

M. ASIF YOUSAFZAI ADVOCATE

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 682 /2013

Mr. Hashim Faraz Pharmacy Technician, North Waziristan Agency,

187413 2004 187413

**APPELLANT** 

### **VERSUS**

- 1 The Director Health (FATA), Department, Warsak Road, Peshawar.
- 2. The Agency Surgeon, North Waziristan Agency, Miranshah

### **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 FOR GRANTING MONTHLY PAY WITH EFFECT FROM SEPTEMBER, 2012 TILL DATE AND ONWARD AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

### PRAYER:

18/4/13

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO PAY MONTHLY SALARIES TO THE APPELLANT WITH EFFECT FROM SEPTEMBER, 2012 TILL DATE AND ONWARD BEING STILL IN SERVICE AND PERFORMING DUTY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

### **RESPECTFULLY SHEWETH:**

- That the appellant was appointed as Pharmacy Technician (Dispenser) in BPS-9 vide order dated 27-03-2012 on the proper recommendation of the Departmental Selection Committee. The appellant took over charge on 28-03-2012 (F.N) in pursuance his appointment order. It is worth to mention here that after joining duties proper service book of the appellant has also been maintained till-date being civil servant and employee of the Health Department on FATA side at N.W.A. The Appointment order recorded/mentioned in the Service Book, the copy of which is attached as Annexure-A and Arrival Report is attached as Annexure-B.
- That the appellant has been continuously performing his duty as civil servant of the Health Directorate FATA in N.W.A. upto the entire satisfaction of his superior and there are no complaints against the appellant so far.
- That all of sudden that without passing any proper order, the pay of the appellant has been stopped since September, 2012 and when the appellant asked from the concerned office about the salaries he was orally told that his pay has been stopped by the Agency Surgeon. Papariane California at Armi C
- That then the appellant forthwith filed an appeal on 20.10.2013 and waited for 90 days but no action has been taken on depare tmental appeal of the appellant so far, hence the present appeal on the following grounds amongst the others: Copy of Appeal is attached as Annexure-D.

### **GROUNDS:**

That not paying the monthly salaries to the appellant and not taking any action on the departmental appeal of the appellant, is against the law, facts, norms of justice, therefore, not tenable

- That the appellant is still in service performing his duty and has not been terminated so far, therefore, the appellant is entitled for his claim of the monthly salaries illegally.
- That not paying the monthly salaries to the appellant and stoppage of pay without any proper order, actually amounts to an arbitrary act on the part of the respondents which is not tenable in the eyes of law.
- That the appellant has not been treated according to law and rules and has been deprived from the monthly salaries despite proper performance of duty, thus the action of the respondents is totally illegal and without lawful authority.
- That being a civil servant, the appellant is entitled to the salaries of the post in accordance with Section-17 of the Civil Servant Act, 1973.
- That the appellant has been condemned unheard and no prior chance of defense or hearing was provided to the appellant while stopping his monthly salaries.
- G) 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 maybe accepted as prayed for.

Appellant Hashim Faraz

THROUGH:

**P**.

( M. ASIF YOUSAFZAI ) ADVOCATE, PESHAWAR

•	m. Hashine Jases Kran	<u>ı</u>
	1- Name(الله المعالمة المعالمعالمة المعالمة المعالمة المعالمة المعالمة المعالمة المعالمة الم	,
	Do Ristani ( Isla	ira).
·	2- Na ionality and Religion 777	
•	( Earny ) A ! of Banny	-
	3- Residence	
	3- Residence (مبتقل د باکش) 4- Father's name and residence Mu, San faka 3 (والد کانام اوریت)	KLG
•	4- Father's name and residence	
	(والدكانام اورپية)	,
	4- Father's name and residence  (والدكانا) (والدكانا)  5- Date of birth by christian era as 15/06/1975	
<i>:</i>	flearly as can be de-	•
•	(تاریخ بیدائش مطابق س عیسوی)	•
	6- Exact height by measurement	
	اريره (قدوقات)	
•	7- Personal mark of identification	
•	(نثان ثاخت)	•
	c (Now we would office	er)
o soft hand/right h	and thumb and finger-impressions of (Non-gazetted office	
8. Left Hallanger	(مردی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے	2
	209210B (0. 000-200	÷
	Might ager	
Little Finger	Ring Ringer	•
(18.37)	(چينگليا ( پينگليا )	
		•
Fore		•
(ت		
		,
9. Signature of G	ovt. Servent	
ی ملازم کے دستخط)	()(6,0)	: •
(100)		
·.	$\sim \sim $	
		efficer
to Cimpature 20	d designation of the Nead of the Office or other Attesting	Officer
10. Signature an	(القندون المرجعي في المرادمير)	
•	W.W. vaeben	
Ellis	( Wirang Lain	
Allie		•
A		
	19、高度1000mm,这个1000mm,也是1000mm。	
		•
•	the test at least	t every

Note: The enteries in this page should be renewed or re-attested at least every five and the signatures in lines 9 and 10 should be dated. Finger prints need taken after every 5 years under this rule.

الم مندرجه کم از کم پانچ سال بعد تقیدیق ہونا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے نیچے تاریخ لکھنی چاہئے۔ پنشانات کے لئے ہرپانچ سال کے بعد تقیدیق کی ضرورت نہیں

	<b></b>							7
9	10	11	12		13		14	15
Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal	Signature of the head of the office or other Attesting officer		leave net exceading 120 days) to 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, reward or praised of the Government servants
دسخط افسرمجاز	تاریخ انقطاع ملازمت	ر دوبات انقطاع لمازمت ترقی تبادله بابرطرفی	دسخط افرنجاز	رخصت کی نوعیت دمعیاد	کانعین Period	لئے اوسط تخواہ Government to which debitable گورشنٹ ہے رقم اداموگ	دستخطافس ، مجاز	غیرمناسب کارکردگی کا ریکارڈ
	27 03/	Appoint	Eaf as	. 7		ry Tech	necan	BP.S.09
	· ·	on Con	tweet		()	of the	recont	1354
		Vide A	genery	Surf	on o	wett 1	57/1/15	Corp
		Agence	Bede	ben	1 2.	ziolsti	No. 900	7-5/
		Apptt -	plater	27/	$\frac{3}{2}/\frac{2}{n}$	12.		<u></u>
	· ·			$  \cap$				4)
	-	,	hA	1)			1-	<b>/</b>
1	+ 4	,	<del>                                     </del>	2	•			
	1				3		ency Surge	
Ade	80701	on	Again		<b></b>		N.W.Ayency Miranshab	· · · · · · · · · · · · · · · · · · ·
N	Miranshal	}	27.17			· ·		•
					' '			
	•							
-		_						
				1				
			all	d				
			1					
			/	V				
						:		
							•	
					-			* .
·								
							, ,	
					,			

٠. ′

.

· · ·

.

٠

the Agency Surgeon (3) N. W. A Miranshah. Subject:- Assive Se port Uncomplance of your good office Order no. 904-5 dalid 27-3-2012 NOW, I have the hormer to Stated hat my asseivel Suport may be consider our dated 28-3-2012 for Suty of D. hankis yours obedients Dalid 2812. Mr. Hushon Faraz Alund B. W. A.

### PERFORMANCE CERTIFICATE

Certified that Mr. Mst Hallim Forg? S/O B/O Surfava? 1 Chan

is performing his/her/ Govt duty regularly from the date of appointment till date.

There is no Complaint agent him/her. He/she has a good moral character.

Agency Surgeon

North Waziristan Agency

Miranshah

farid d

יול לו אול לו או לו ל פותו לו ל אונין of chalder is reprinted to pay it its else of .: U's ن در سیف کردن کوی نے کوری کی کاری کو 2012 013 / 10/6/ 1 words 2 E/27/8// 2 DOVERS DIE TO CONTE Orno de or of or one of the origination tion in cold 8-1-013. : 2/3 Allered in the constitute of

## 

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_\_\_/20

Counsel on my/our costs.

(CLIENT)

**ACCEPTED** 

M. ASIF YOUSAFZAI Advocate

M. ASIF YOUSAFZAI

Advocate High Court, Peshawar

**OFFICE:** 

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar Peshawar. Ph.091-2211391-0333-9103240