

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN.

Appeal No. 998/2015

Date of Institution ... 04.09.2015

Date of Decision ... 28.11.2018

Muhammad Ayub S/O Ghulam Hassan,
Caste Kharal, R/o Wanda Mochinawala, D.I.Khan.

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary Health Services Civil Secretariat, Peshawar and 2 others. ... (Respondents)

MR. MUHAMMAD IQBAL KUNDI,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was appointed as as Ward Orderly in D.H.Q Teaching Hospital, D.I.Khan on 10.01.1996. He was dismissed from service vide impugned order dated 14.05.2015. That after filing the instant service appeal on 04.09.2015 his departmental appeal dated 22.05.2015 was rejected on 29.10.2015.

ARGUMENTS

3. Learned counsel for the appellant argued that while posted in DHQ, D.I.Khan he was transferred vide order dated 27.04.2015, which was never communicated to the appellant. Moreover, instead of Muhammad Ayub name of Ayub Khawar was

written in the said order which was a serious mistake on the part of the respondents. He was served with an explanation on 04.05.2015. Thereafter, show cause notice dated 05.05.2015 served on him to which he replied accordingly. That major penalty of dismissal from service was imposed on him vide impugned order dated 14.05.2015. Major penalty of dismissal from service was imposed on him without conducting regular enquiry, as held by the superior courts in numerous judgments. Respondents failed to mention reasons for dispensing with regular enquiry. No opportunity of personal hearing etc was afforded to the appellant. Act of the respondents was patently illegal, unlawful and nullity in the eyes of law.

4. On the other hand learned District Attorney argued that all codal formalities were completed before imposing of major of dismissal from service on the appellant. The order was passed strictly in accordance with law and rules.

CONCLUSION.


5. We have gone through the record and observed that the respondents failed to establish, whether transfer order dated 27.04.2015 was received by the appellant or not? Hence, it can be presumed, it was not received by him. Moreover, correct name of the appellant was not written in the said order. Respondents served show cause notice on the appellant without assigning any reason for dispensing with formal enquiry in violation of sub rule (b)(ii) of Rule-5 of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011. The superior court in various judgments had held that in case major penalty was to be imposed to a civil servant then regular enquiry as provided in the relevant rules should be conducted against which was not done in this case. No opportunity of personal hearing was afforded to the appellant. Penalty awarded to him was very harsh and did not commensurate with the guilt of the official concerned. The respondents failed to take into consideration twenty years long service rendered by the appellant and was

dismissed from service in a whimsical manner. Learned counsel for the appellant succeeded in making out for strong case for indulgence of this Tribunal.

6. As a sequel to the above discussion, the appeal is accepted, the appellant is reinstated in service and the impugned order dated 14.05.2015 is set aside. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


ANNOUNCED
28.11.2018

Order

28.11.2018 Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted, the appellant is reinstated in service and the impugned order dated 14.05.2015 is set aside. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
28.11.2018



(Ahmad Hassan)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member

20.06.2018

Neither the appellant nor his counsel present. M/S Sadaqat Ullah Deputy Secretary and Muhammad Jamshed CCT alongwith Mr. Usman Ghani, learned District Attorney for the respondents present. Adjourned. To come up for arguments on 27.08.2018 before the D.B. at camp court D.I.Khan.


Member


Chairman
Camp Court, D.I.Khan

27.08-2018

Counsel for the appellant present. M. Jamshed, CCT on behalf of the respondents present.

Tour is hereby cancelled, Therefore the case is adjourned for the same on 22.10.2018 at camp court D.I.Khan.



22.10-18


Tour is hereby cancelled, therefore the case is adjourned for the same on 27-11-18, at camp court D.I.Khan.



27.11.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Counsel for the appellant seeks adjournment. Adjourned for tomorrow i.e 28.11.2018 for arguments before D.B at camp court D.I.Khan.



(Ahmad Hassan)
Member

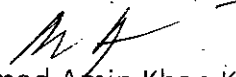

(M.Amin Khan Kundi)
Member
Camp Court D.I.Khan

Service Appeal No. 998/2015

24.01.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for the respondents also present. Learned counsel for the appellant submitted rejoinder. Copy of the same handed over to learned District Attorney. Adjourned. To come up for arguments on 13.03.2018 before D.B at Camp Court D.I.Khan.



(Ahmad Hassan)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

13.03.2018


Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Muhammad Jamshaid, CCT for the respondents present. Counsel for the appellant seeks time. Granted. To come up for arguments on 25.06.2018 before D.B at camp court, D.I.Khan.


Member.


Chairman
Camp court, D.I.Khan


25.05.2018

As per direction of the Hon'able Chairman tour to D.I.Khan is rescheduled. To come up for arguments on 20.06.2018 instead of 25.06.2018. Notices be issued to the parties accordingly.


Member


26.07.2017

Counsel for the appellant present. Mr. Muhammad Jamshid, Technician alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Written reply on behalf of respondents submitted and copy handed over to learned counsel for the appellant for rejoinder. To come up for rejoinder, on 27.09.2017 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


27.09.2017


Counsel for the appellant present and Mr. Farhaj Sikandar, District Attorney for respondents present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 29.12.2017 before D.B. at Camp Court D.I.Khan.


Member
(Judicial)
Camp Court D.I.Khan

28.12.2017

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Jamshid, Chief Clinical Technician for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 24.01.2018 before D.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


(Muhammad Hamid Mughal)
Member
Camp Court D.I.Khan

26.04.2016

Appellant in person and Mr. Muhammad Jamshaid, Chief Clinical Technician alongwith Mr. Farhaj Sikandar, GP for respondents present. Representative of the respondents requested for time to submit written reply/comments. To come up for written reply/comments on 27.09.2016 at camp court D.I. Khan.


Member
Camp Court D.I. Khan


27.09.2016

Counsel for the appellant and Mr. Samiullah, Junior Clerk alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Written reply by the respondents not submitted and requested for further time to submit written reply. Request accepted. To come up for written reply/comments on 24.01.2017 before S.B at Camp Court D.I.Khan.


Member
Camp Court D.I.Khan

25.01.2017

Appellant in person and Mr. Muhammad Jamshid, Chief Technician alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Representative of respondent-department requested for time for submission of written reply. Record reveals that on last two dates respondents are requesting for time for submission of written reply so, Government Pleader is directed to direct the respondents to positively submit written reply on next date otherwise stern action would be initiated against the respondents. To come up for written reply/comments on 29.03.2017 before S.B at Camp Court D.I.Khan.-


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

29.03.2017

Since tour is hereby cancelled, therefore, the case is adjourned for the same on 26.07.2017.


Reader

Appeal No. 998/15.

Mr. Mohammad Ayub.

23.11.2015

Counsel for the appellant present. He submitted that the appellant was appointed on 10.1.1996 as Ward Orderly, has been dismissed from service vide impugned order dated 14.5.2015 without any departmental enquiry and giving him opportunity of defence and personal hearing. That after filing of this appeal, his departmental appeal has also been rejected vide order dated 29.10.2015 after lapse of the statutory period. The learned counsel stressed that the appellant has rendered service for sufficient time, has been unlawfully dismissed from service. Perusal of the record shows that the appellant has denied to have received his transfer order on the basis of which he was dismissed from service.

Points raised need consideration. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments at camp court, D.I.Khan on 26-1-2016.

MEMBER
Camp Court, D.I.Khan

26.01.2016

Appellant Deposited
Security & Process Fee

Counsel for the appellant and Mr. Farhaj Sikandar, GP present. None is available as representative on behalf of the respondents. Security has not been deposited and request made on behalf of the appellant for deposit of the same. Request is accepted. Security and process fee be deposited within 7 days. Thereafter, notices be issued to the respondents and case to come up for written reply on 26-4-16 at camp court, D.I.Khan.




MEMBER
Camp Court, D.I.Khan

FORM-A

FORM OF ORDER SHEET

Court _____

Case No. 998/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	04.09.2015	<p>The appeal of Mr. Muhammad Ayub presented to-day by Mr. Muhammad Iqbal Kundi, Advocate may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2</p> <p>This case is entrusted to Touring Bench, D.I.Khan for preliminary hearing to be put up there on <u>28-9-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	28.09.2015	<p>Appellant with counsel present and requested for adjournment. Therefore, case to come up for preliminary hearing on <u>23-11-15</u> at camp court, D.I.Khan.</p> <p style="text-align: right;"> MEMBER Camp court, D.I.Khan</p>

BEFORE THE K.P.K. SERVICE TRIBUNAL PESHAWAR CAMP D.I.KHAN.

Service Appeal No. 998 2015

Muhammad Ayub Appellant.

V/S

Govt of K.P.K through Secretary
Health etc. Respondents.

Index.

S.No.	Particulars of documents	Annexure	Pages.
1.	Memo and grounds of Appeal.		1-7
2.	Copy of transfer order dated. 27.4.2015 and copy of attendance register.	A & B	8-10
3.	Copy of Explanation dated. 4.5.2015	C	11
4.	Copy of show cause notice dated. 5.5.2015, copy of reply dated. 9.5.2015	D & E	12-14
5.	Copy of dismissal order dated. 14.5.2015	F	15
6.	Copy of Departmental Appeal alongwith despatch receipt		16-19
7.	Wakalatnama.		

Appellant.

Ayub

Muhammad Ayub

through Counsel.

Iqbal Kundi

(Muhammad Iqbal Kundi)
Advocate High Court.

Dated. 31.8.2015.

①

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP OFFICE DERA ISMAIL KHAN.

Service Appeal No. 998 2015

A.W.F. Province
Service Tribunal

Diary No. 1028
4-9-15

Muhammad Ayub
S/O Ghulam Hassan,
Caste Kharal, R/O Wanda Mochianwala
Dera Ismail Khan.

Appellant.

V/S

1. Govt Khyber Pakhtunkhwa
Through Secretary Health Service
Civil Secretariat,
Peshawar.
2. Director General,
Health Services,
Govt of Khyber Pakhtunkhwa
Civil Secretariat
Peshawar.
3. Medical Superintendent,
DHQ Teaching Hospital
Dera Ismail Khan.

Respondents.

Answer
4/9/15

Service Appeal Under Section 4 of
Khyber Pakhtunkhwa Services Tribunal
Act 1974.

Prayer. On Acceptance of instant Appeal
this Hon'ble Tribunal may be
Pleased to pass an order for
Setting aside impugned order
bearing No. 3911-14/PF dated. 14.5.2015
vide which Appellant was dismissed
from Services and re-instating the

Muhammad

Appellant in service at his original Position with all back benefits.

Respectfully Sheweth,

1. That Appellant has been performing his duty on the Post of Ward Arderly D.H.Q Teaching Hospital D.I.Khan for the last 20 years with entire satisfaction of his Superiors and during long perod Appellant services remained clean, unblemished without any red entry.

2. That while posting at Zakat Office D.H.Q Hospital D.I.Khan Appellant was transferred vide Office order No.2567-72 dated.27.4.2015 which was neither conveyed to him nor timely informed about the transfer by the Office where Appellant was performing his duty. Even he was not relieved from his duty. , therefore he was performing his duty till 15.5.2015 at Zakat Office D.H.Q Hospital Dera Ismail Khan and was also marking his attendance.

Copies of the transfer order dated.27.4.2015 and relevant portion of attendance Register are enclosed and marked as Annexure A & B

3. That an alleged explanation bearing No.3722 dated.4.5.2015 was issued to Appellant by Respondent No.3 which was neither served nor received by Appellant. It is necessary to mention that Appellant has neither refused to perform duty at Female

Signature

Medical Ward 'B' nor refused to receive the alleged explanation.

Copy of explanation dated.4.5.2015 is enclosed and marked as Annexure 'C'

4. That on next very day alleged show Cause notice No.3750/PF dated.5.5.2015 was served upon Appellant by Respondent No.3. Reply of which was submitted by Appellant on 9.5.2015.

Copies of show cause notice dated.5.5.2015 and It's reply dated.9.5.2015 are enclosed and marked as Annexure D & E

5 That despite constitution of Enquiry Committee or appointment of Enquiry Officer for probing into the alleged charges of misconduct levelled against Appellant in the alleged explanation as well as show cause notice dated.4.5.2015 and 5.5.2015 respectively appellant was dismissed from services by Respondent No.3 vide Office order No.3911-14/PF dated.14.5.2015/

Copy of dismissal order dated.14.5.2015 is enclosed and marked as Annexure F.

6. That being aggrieved from the impugned dismissal order No.3911-14/PF dated.14.5.2015 Appellant filed Departmental Appeal on 22.5.2015 before Respondent No.2 for setting aside impugned dismissal order dated.14.5.2015 and re-instatement of Appellant in service with all back benefits.

S. Sreedev

Copy of Departmental Appeal dated. 22.5.2015 is enclosed and marked as Annexure G.

7. That Respondent No.2 failed to respond the Departmental appeal within stipulated period of 90 days , hence instant Service Appeal is being filed for setting aside impugned dismissal from Service office order No.3911-14/PF dated.14.5.2015 and re-instating the Appellant in service at his original position with all back benefits interalia on the following grounds

GROUND OF APPEAL.

- i) That impugned dismissal from Service order dated 14.5.2015 is wrong , void ab initio, arbitrary , without lawful authority and in effective upon the rights of the Appellant .Therefore the same is liable to be set at naught .
- ii) That ~~Service~~ ^{alleged} explanation dated. 4.5.2015 and alleged show Cause notice dated.5.5.2015 upon Appellant within gape of one day by Respondent No.3 is wrong , without lawful authority and violation of service rules notified by the Government for Civil Servant.
- iii) That according to law Respondent No.3 was required to constitute Enquiry Committee or appoint Enquiry Office to conduct proper enquiry into the matter before awarding major punishment of dismissal from service to the Appellant but Respondents failed to conduct departmental enquiry against the allegations of misconduct

Signature

levelled against Appellant in the impugned explanation and show cause notice dated.4.5.2015 and 5.5.2015 respectively .Which is against the norm and rules of Civil Servant

iv) That it is evident from attendance register attested by the Officer on duty, that Appellant remained present on his duty from 27.4.2015 till 15.5.2015 while handing over impugned letter dated.14.5.2015 of dismissal from Service .Even apart from that he was not habitual to remain absent from Duty. Thus clause 'D' of K.P.K. Government Service (efficiency & Discipline) rules 2011 are not applicable upon Appellant and his services cannot be dismissed under the said rule ' d ' as well as on such sketchy and frivolous grounds.

v) That proper Departmental enquiry was not conducted against Appellant by Respondent No.3 to prove the alleged charges of misconduct mentioned in alleged explanation and show cause notice dated.4.5.2015 and 5.5.2015 respectively.

vi) That while awarding major punishment to Appellant opportunity of personal hearing, being mandatory , was to be given to him but no such opportunity of personal hearing was given to the Appellant. Thus impugned dismissal order dated.14.5.2015 is liable to be set aside on this score alone

Signature

vii) That Respondent No.3 , was personal and enmitic with Appellant and hungrily took unjust decision in hurry to dismiss him from service on flimsy

grounds which is evident from alleged explanation dated.4.5.2015 and alleged show cause notice dated.5.5.2015 issued by him day after another. It thus reveals that he had intended to dismiss the Appellant from service in ^{any} manner whatsoever.

viii) That Appellant has abruptly dismissed from Govt: Servant by Respondent No. 3; without solid reason purely biased prejudiced and based on concocted material in contravention to the standing rules/procedure, ignoring all official /Services /human rights laws and his 20 years spotless services in his credit were smashed with one stroke of pen unlawfully and without observing code of procedure laid down in the 'Esa Code " title conduct / discipline and E & D rules .Thus on this score alone impugned order dated.14.5.2015 of dismissal from service is liable to be set at naught .

ix) That alleged charges of refusal of orders i.e. not joining new assignment and refusal of alleged explanation letter , stated to have been issued on 4.5.2015 . as mentioned in the alleged show cause notice is incorrect , wrong and biased because appellant being Class IV employee /Low status cannot think /afford any refusal on his part in case of transfer /posting on the same station in same set up /administration .

Legalised

x) The impugned order: dated. 14.5.2015 is not tenable under the law therefore the same is liable to be set aside.

xi) That the Counsel of the Appellant may also be allowed to raise additional grounds during

course of hearing.

In wake of submissions made above it is humbly prayed that the instant Service Appeal of the Appellant may be accepted as prayed for in the head^{ing} of the appeal.

Appellant .

Ayub

Muhammad Ayub
Ex Ward Arderly

HQ Teaching Hospital
D.I.Khan.

Dated. 31.8.2015.

Iqbal Kundi

Through Counsel.

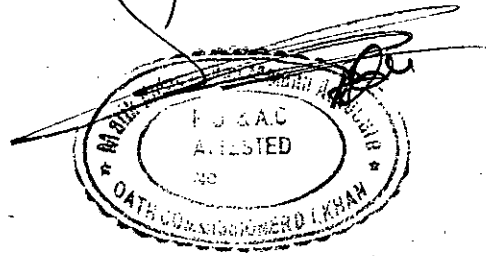
Muhammad Iqbal Kundi
Advocate High Court.

Affidavit.

I, Muhammad Ayub S/O Ghulam Hassan R/O Wanda Mechianwala D.I.Khan do hereby solemnly affirm and declare on oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and that nothing has been kept secret.

Ayub

Deponent.



Office of the Medical Superintendent

DHQ Teaching Hospital DIKhan

No. _____/

Dated 27 / 4 / 2015OFFICE ORDER

The following posting / transfer among the class-IV staff of DHQTH DIKhan is hereby ordered with immediate effect in the public interest.

S.No	Name	From:	To
01.	Muhammad Javed	Main Gate DHQ	Emergency (Morning)
02	Munawar Ali	Emergency (Morning)	Zanana Gate (Morning)
03	Rafiq	Zanana Main Gate	Main Gate DHQ
04	Ayub Kahwar	Zakat OPD.	Female Medical Ward-A

[Signature]
Medical Superintendent
DHQ Teaching Hospital DIKhan

No. 2567-721

Copy forwarded to the:-

1. Incharge Zanana Hospital DIKhan.
2. Incharge Units concerned DHQTH DIKhan.
3. Head of Class-IV DHQTH DIKhan.
4. Concerned Officials for compliance.

[Signature]
Medical Superintendent
DHQ Teaching Hospital DIKhan

Satisfied
[Signature]
M. J. J. J. J.
Adv. High Court
D.I. Khan

Daily Attendance Register of the

(9)

ANN-15

M.S.W. Office

May

15/5

Serial NO	Name	Father's Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12
	Mohammad				A	A	A	A							
	Asfaq M.S.W.O														
	Muneer Ahmad	(MPT)		P		P	P	P	P	P	P	P	P	P	P
	M. Ayub			P		P	P	P	P	P	P			P	P

Attested

20/5/15
 Medical Social Worker
 D.M.C. Hospital
 D. H. Khan

Attested
 In presence of
 Mr. Syed Khair
 Adv. High Court
 I. W. Khan

For the month of

May 2015

(10)

May 2015
M.S.

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 Total NO. of days Remarks

P P P P H P P P

P P P

~~Allotted~~
~~Medical Officer~~
~~2015/05~~
~~P.H.S. Government~~
~~P.H.S. Hospital~~

~~Dr. [Signature]~~
~~Medical Officer~~
~~Adv. High Wound~~
~~P.H.S. Hospital~~

Ph# 0966-9280201/ Fax # 0966-9280446/DIK

Office of the Medical Superintendent

DHQ Teaching Hospital DIKhan

No. _____

Dated 04 / 5 / 2015

To

Muhammad Ayub
Ward Orderly DHQ Teaching Hospital
DIKhan

Subject;- EXPLANATION

Memo:-

It is reported by the Incharge that you have not joined the new assignment but refused to obey the order. Your this act constitute misconduct. You are called upon to explain that why you may not be proceeded against under Efficiency and Discipline Rules. Your reply should reach within 24 hours. Meanwhile you are placed under suspension.

3723-24

No. _____

Copy forwarded to the:-

1. Incharge Unit Concerned
2. Head of Class-IV

Kayam Shah
Medical Superintendent
DHQ Teaching Hospital DIKhan

attested
In presence of
M. Iqbal Khan
Adv. Hafiz Qureshi
A. I. Khan

Kayam Shah
Medical Superintendent
DHQ Teaching Hospital DIKhan

To

Muhammad Ayub
Ward Orderly DHQ Teaching Hospital
DIKhan

SHOW CAUSE NOTICE UNDER
KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS
(EFFICIENCY AND DISCIPLINARY) RULES, 2011

I, Dr. Karim Shah, Medical Superintendent DHQ Teaching Hospital DIKhan as a competent authority under the rules ibid do hereby serve you Muhammad Ayub, Ward Orderly as follows.

1. (i) Whereas, you, Muhammad Ayub Ward Orderly, were transferred to Female Medical Ward-A by the undersigned vide this office order No.2567-72 dated:27.04.2015.
- (ii) Whereas, you, Muhammad Ayub Ward Orderly, have refused to receive and obey the transfer order and to join the new assignment and perform the duty.
- (iii) Your explanation was called but you also refused to receive the explanation order issued vide this office letter No.3722 dated 04.05.2015.

From your conduct, I am satisfied that you have committed the following act/ omission specified in rule 3 of the said rules.

- (1) Misconduct
2. For reason of the above, I as competent authority have tentatively decided to impose upon you the major penalty of dismissal from service specified in Rule 4 (b) (iv) of the rules ibid.
3. You are required to show cause as to why the aforesaid penalty should not be imposed upon you.
4. If you failed to reply to this notice with in 07 days of its delivery it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desired to be heard in person.
6. Meanwhile, you are placed under suspension under Rule 6 of the said Rules.

Attended
M. J. Khan
Ward Orderly
DIKhan

Karim Shah
COMPETENT AUTHORITY

ANN - (E)

(13)

To

The Medical Superintendent
D.H.Q. Teaching Hospital D.I.Khan

Subject: SHOWCAUSE NOTICE UNDER KHYBER PAKHTUNKHWA GOVT. SERVANT
(EFFICIENCY DISCIPLINARY RULE 2011)

Honoured Sir,

With due veneration and humble submission your low paid, inferior and most obedient subordinate do hereby submit defense reply with reference to the showcause notice issued under your letter No.3750/PF dated.05-05-2015 received on 07-05-2015 with the hope that your magnanimous authority will graciously be please to take lenient view as my this submission apart from defense is infact call of justice.

Sir, I posses long span of 20 years spotless and unblemished service at my credit purely to the desired level and satisfaction of superiors so question of any type of refusal on my part does not arise as such I shall not be panelized for un committed sin or nominal procedural technicalities.

In this context factual position is elucidated as under:-

1. I was neither timely informed of the transfer by any official / immediate boss nor relieved to join new assignment or duty place, so it may not be termed as refusal of orders.
2. It really came to me not only as a great surprise but shocking also that instead of proper relieving I am charged for refusal of receiving transfer orders and explanation which was not delivered to me either through any official or by post so, I may not be charged for the lapse.

It is worth to mention here that I remained on duty in substantive/ original posting section till 06-05-2015 as would reveal from the attendance register wherein my presence can be verified. Hence the charges leveled in the showcause notice proves to be un justice, weightless, based on false attribution and nothing else.

Sir, it is how strange that according to the clause (III) of aforesaid showcause notice and explanation is claimed to have been called from me on 04-05-2015 vide letter No.3722 dated 04-05-2015 and on next day on 5th May, 2015 a

Accepted
Witnessed
M. J. Khan
Adm. Officer
D.I.Khan

Office of the Medical Superintendent

DHQ Teaching Hospital DIKhan

No. _____ / PF

Dated 14 / 5 / 2015

OFFICE ORDER:

Muhammad Ayub Ward Orderly was transferred from Zakat Office to Female Medical Ward under this office endorsement order No.2567-72 dated 27.04.2015 but he refused to obey and receive his transfer order and join his new assignment. His explanation was called vide this office letter No.3722 dated 04.05.2015 but he also refused to receive his explanation order.

He was therefore served with the show cause notice as to why strict disciplinary action including his dismissal from service may not be taken against him. Despite all the above referred correspondence, the delinquent official did not join his new assignment. Today the incharge of class-IV had reported that he is still absent from duty for the last two weeks with out any leave or permission.

I believe that Muhammad Ayub Ward Orderly is incorrigible. The facts on record are sufficient to prove that the official is guilty of gross misconduct. I therefore being competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, impose major penalty upon him and dismiss him from service with immediate effect.

3911 - 14
No. _____ / PF

Medical Superintendent
DHQ Teaching Hospital DIKhan

Copy forwarded to the:-

1. District Accounts Officer DIKhan.
2. Accounts Section MS DHQTH DIKhan.
3. Incharge Class-IV DHQTH DIKhan.
4. Muhammad Ayub Ward Orderly DHQTH DIKhan.

Attended
M. J. Ghani
Adm. High Court
D. J. Khan

M. J. Ghani
Medical Superintendent
DHQ Teaching Hospital DIKhan

ANN (G) 16

To,

The Director General,
Health Services Khyber Pakhtunkhwa,
Peshawar.

Subject:- APPEAL AGAINST THE OPPRESSIVE / UNLAWFUL DISMISSAL.

Venerable Sir,

With profound respects and humble submission, your kind attention is drawn to a very apprehensive discriminative/ decision of Medical Superintendent DHQ Teaching Hospital D.I.Khan. He is adopting impertinent attitude to all subordinates and violation of competency as a matter of routine, which is evident from his order issued under endst: No. 3911-14/PF dated: 14/05/2015 copy attached (Annexure-"A") under which the applicant has been abruptly dismissed from government servant without solid reason purely biased / prejudiced and based on concocted material in contravention to the standing rules/ procedure ignoring all official/ services / human rights of low paid class-IV government servant and law abiding citizen of mother land having 20-years spotless services at his credit with not a single guilt or laxity throughout the long span of services .

In fact Medical Superintendent never bother to follow the prescribed rules and also use abusive language almost all employees. He is so cruel that he dismissed humble petitioner from 20-year qualifying service with one stroke of pen without observing coded procedure laid in Esta-code "titled" conduct/discipline and E&D rules besides directive of August High Court and Supreme Court of Pakistan in this context. The background of his recent aggressive action is briefly narrated as under:-

The decision is also not in line of the grounds of proceedings clause "a" to "f" of KPK Government Servant (efficiency & discipline) rules 2011 because clause "d" is applicable to a person habitually absenting from duty.

While on usual duties in the beginning days of current month all of a sudden on 07/05/2015, I received a show cause notice No. 3750/PF dated 05/05/2015 from Medical Superintendent District Headquarter Teaching Hospital DIKhan (Annexure-B) under which the so called authority leveled the charges of refusal of orders, not joining new assignment and refusal of explanation letter stated to have been issued vide his letter No. 3722 dated 04/05/2015 as mentioned in clause- III of the said show cause notice though this is not correct because no employee of lowest status can think/ afford any refusal on his part in case of transfer/posting on same station in same setup/administration.

Attended
M. Iqbal Khan
Adm. Hk. Comm.
D. I. Khan

I responded the show cause notice well in time and submitted reply on dated 09/05/2015 within specified time limit copy appended (Annexure "C") in which the whole position was submissively explained.

It is worth mentioning that my spouse ailing of serious allergy remained admitted in DHQ Hospital on dated: 05/05/2015 copy attached for perusal (Annexure "D")

It is highly astonishing that the authority i.e Medical Superintendent Teaching Hospital D.I.Khan became personal and hungrily took un-just decision vide letter No. 3911-14/PF dated: 14/05/2015 and straight away dismissed me from services which is un lawful in nature as the impugned order is based on malevolence beyond the limitation.

The decision is one sided, ill-intentioned as would reveal form chain of supporting documents issued in great hurry (I-attribution of refusal/non compliance of orders, explanation together with suspension within couple of days and dismissal within one week without listening my cry and hoe, consideration of defense reply, opportunity of personal hearing , appointment of impartial inquiry officer prior to issue of the final order of dismissal of a govt servant like his private servant.

Prayers

In view of facts narrated above I implore to your kind authority to very kindly intervene in order to escapè my 20-years services and declare the defective decision of MS DHQ Teaching Hospital DIKhan null & void and I may be allowed to continued to legitimate duties with zeal/zest to the best of capability so that rights of right person are not Jeopardized.

Sir, I assure that I shall leave no stone unturned in discharge of assigned duty to the desired level and satisfaction of superiors. Hoping to be given immediate relief in real sense of sympathy/ benevolence to the humble sub subordinate on humanitarian grounds who with his poor family is likely to face bitter consequences owing to the imposed devastation.

Thanking you in anticipation sir

Dated: 22/5/2015

Yours Obediently.

Ayub

Muhammad Ayub
Ward Orderly DHQ Teaching
Hospital, D.I.Khan.

Attested
M. Iqbal Khan
Adv. Hafiz Zorab
D.I.Khan

Leopards Courier Services Private Ltd.

Consignment Tracking Detail

CN / Reference #	Date / Time	Status	Handling/ Remarks	Courier / Van	Bag #	Print #	Origin	Destination	PCS	Weight
58352926	25/05/2015 2:00:00	Delivered to IDRESS, SELF RECEIVED		00023 ABDUL SAMI			DERA ISMAIL KHA	PESHAWAR	1	
58352926	25/05/2015 09:45:41	Assigned to Courier		00023 ABDUL SAMI			DERA ISMAIL KHA	PESHAWAR	1	
58352926	23/05/2015 09:22:42	Assigned to Courier		00023 ABDUL SAMI			DERA ISMAIL KHA	PESHAWAR	1	.250
58352926	23/05/2015 09:04:49	Assigned to Courier		00036 HADI KHAN 1ST MAIL			DERA ISMAIL KHA	PESHAWAR	1	.250
58352926	23/05/2015 08:33:22	Arrived at PESHAWAR					DERA ISMAIL KHA	PESHAWAR	1	.250
58352926	22/05/2015 16:34:28	Dispatched to PESHAWAR		00019 COUNTER BOOKING	DIP0613224		DERA ISMAIL KHA	PESHAWAR	1	.250
58352926	22/05/2015 15:08:37	Packet Booked		00019 COUNTER BOOKING			DERA ISMAIL KHA		1	.250
58352926	21/05/2015 15:26:09	Issued to Courier		00019 COUNTER BOOKING			DERA ISMAIL KHA			

Leopards Courier Services (Pvt.) Ltd.

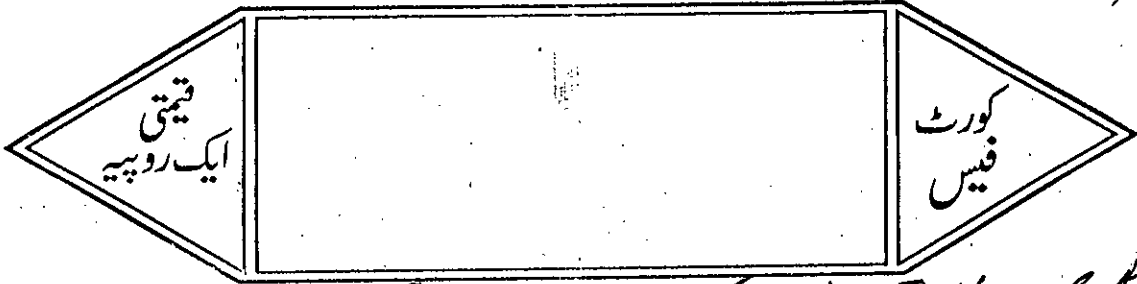
We hereby confirm taking the delivery without any complaint or claim to Leopards Courier Services (Pvt.) Ltd.

DELIVERY SHEET

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19

وکالت نامہ



Before Khyber Pakhtunkhwa Services Tribunal Peshawar
 Appellant Camp office D-1 Khan

Muhammad Ayub Govt of K.P.K through Secretary Health & others
 Service Appeal u/s of دعویٰ یا جرم
 Services Tribunal Act. 1974 تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

D. I. Khan مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجوہ دی برائے پیشی یا تفریق مقدمہ بنام
 Muhammad Iqbal Kundi Advocate High Court D. I. Khan

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر مقام پکھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذگری نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر پاشی یا راضی نامہ و فیصلہ برطرف کرنے اقبال دعویٰ کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ ہرگز بیرون از پکھری صدر بیرونی مقدمہ مقرر نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا منسوخی ذگری یک طرفہ یا درخواست حکم اتناہی یا ترقی یا گرفتاری قبل از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ادا تکی علیحدہ مختام بیرونی کا اختیار ہو گا اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپیل نگرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جان اتناہ پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند ہے
 2/9/2015

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Attended & Accepted
 Muhammad Iqbal Kundi
 Adv. High Court
 D. I. Khan
 2-9-2015

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, CAMP COURT,
DERA ISMAIL KHAN**

Service Appeal No. 998/2015

Muhammad Ayub..... (Appellant)

Versus

Govt of K.P.K through Secretary Health and Others ... (Respondents)

WRITTEN REPLY ON BEHALF OF RESPONDENTS No 1-3.

Respectfully Sheweth,

Respondents humbly submit as under:-

PRELIMINARY OBJECTIONS

1. That the instant appeal is badly time-barred. Hence liable to dismissal in its very inception.
2. That the appeal is not maintainable and incompetent in its present form.
3. That the appellant is estopped to file the appeal in hand due to his own conduct.
4. That the appellant has got no cause of action and locus standi.
5. That the appellant has not come to this Honourable Tribunal with clean hands.
6. That the appeal is bad for misjoinder and non-joinder of necessary parties.
7. That the appellant has concealed material facts from this Honourable Tribunal.
8. That the Honourable Service Tribunal has no jurisdiction to entertain the instant appeal.

BRIEF FACTS

1. This Para pertains to official record. Hence needs no reply.
2. This Para is incorrect and not admitted. On the one hand the appellant admits his transfer while the other hand refuses the service of the transfer order upon him which does not appeal to a prudent mind. Furthermore, the performing of duties on his earlier post has no relevancy whatsoever with the present posting. Therefore, performance

of such a duty (which is not acceptable) is without any authority, law and rules.

3. This Para is incorrect and not admitted. Hence, denied. Once again, the appellant is refusing the service of explanation letter upon him. Thus the whole case of the appellant is circling around the non-service of orders which has no truth in it and is just a myth. Furthermore, refusal of appellant from the performance of his duties and his absence is well evident from the non-performance of his duties in the Female Medical Ward as per the report of official of the Hospital dated: 04/05/2015. Copy of the report is attached herewith as annexure-A,B,C,
4. This Para pertains to record.
5. This Para is incorrect and not admitted. The competent authority has the power to dispense with the inquiry under rule (5)(b)(ii) of the KPK, Efficiency and Discipline Rules, 2011.
6. This Para pertains to record.
7. The proper comments to the departmental appeal by the appellant was submitted by the competent authority. Copy of the comments is attached on annexure D.

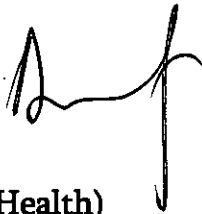
GROUNDS

- i) Incorrect hence not admitted. The order was passed after fulfilling all the legal and codal formalities and is in accordance with law and rules.
- ii) Incorrect hence denied. As stated above.
- iii) Incorrect, hence denied. The competent authority has the power to dispense with the inquiry under rule (5)(b)(ii) of the KPK, Efficiency and Discipline Rules, 2011.
- iv) Incorrect hence denied. The performance of duties if any by the appellant (which is not acceptable) is not relevant to his present posting and thus without authority and against the law and rules for the time being in force. Furthermore, the appellant remained absent from his duties without any approval from the competent authority. Thus clause (d) of rule has been rightly applied.
- v) Incorrect and not admitted, hence denied. Detail reply is already given in Para No. (iii) *ibid*.
- vi) Incorrect and not admitted. Hence, denied. Detail reply is already given in the Paras *supra*.

- vii) Incorrect and vehemently denied. The assertion of the appellant regarding personal grudges with the appellant of respondent No. 03 is baseless and a false story which neither has any truth nor the same is supported by any proof whatsoever and is just inserted in the instant Para to take undue advantage.
- viii) Incorrect and not admitted. Thus denied. The appellant has been dismissed from service after fulfilling all the legal and codal formalities.
- ix) Incorrect and not admitted. This Para pertains to record.
- x) Incorrect and not admitted. Hence denied. The impugned order has been passed after the fulfilment of all legal and codal formalities therefore; there arise no question of its being to be set aside.
- xi) That the Government Pleader may also be allowed to raise additional grounds during the course of arguments.

PRAYER

It is, therefore, most humbly prayed that on acceptance of this Para-wise comments, the appeal being devoid of legal footings and merit may graciously be dismissed with cost.



Secretary (Health)
Govt: of Khyber Pakhtunkhwa, Peshawar
Respondent No 1



Director General (Health Services)
Khyber Pakhtunkhwa, Peshawar
Respondent No 2



Hospital Director
Medical Teaching Institution,
Dera Ismail Khan

خدمت حساب عید میل بسیر سٹیشن میں صبا جی ڈی ایچ کے لیے خدمت

ANNEXURE "A"

صبا عالی

215

ترانہ میں پیکر ایوب فاؤنڈیشن کے لکچر 2567.74 کے تحت

اسٹیٹ ٹرانسفر ڈیمانڈ میٹرنگل وارڈ میں پہلی - مٹر اطمینان

ڈیمانڈ میٹرنگل وارڈ میں حاقری پنشن کی $28 \frac{4}{15}$ واپسی مقرر ہوئی

پیدا رپورٹ کے غرض خدمت میں

تاریخ 30-4-15

میلنگل وارڈ میں

[Handwritten Signature]

30-4-15

خدمت جناب میڈیکل سپرنٹنڈنٹ صاحب ڈی ایچ کیو یچینگ ہسپتال ڈیرہ ۱

ANNEXURE "B"
جناب عالی (217)

نمائش سے کہ مذکورہ ایوب خاوری کے لیٹر نمبر 72-2567 کے تحت

اسکی ذکوہ OPID سے ٹرانسفر ڈانہ میڈیکل وارڈ A میں ہوئی ہے

مذکورہ ایوب خاوری تک ایوب خاوری نے ڈانہ میڈیکل وارڈ A میں حاضری نہیں

کی 28-4-15 سے 5-5-2015 تک غیر حاضر ہے جو کہ 7 سات دن ہے

میں غیر حاضر ہے

سہرا ایوب کے غرض سے

مقام صرف 4-5-15

سہرا ایوب خاوری
4-5-15

off
suspend a
part
explanations
Vh/M

219

Ph# 0966-9280201/ Fax # 0966-9280446/DIK

Office of the Medical Superintendent

DHQ Teaching Hospital DIKhan

No. 3722

Dated 04/5/2015

To

Muhammad Ayub
Ward Orderly DHQ Teaching Hospital
DIKhan

Subject;- EXPLANATION

Memo:-

It is reported by the Incharge that you have not joined the new assignment but refused to obey the order. Your this act constitute misconduct. You are called upon to explain that why you may not be proceeded against under Efficiency and Discipline Rules. Your reply should reach within 24 hours. Meanwhile you are placed under suspension.

3723-24

No. _____/

Copy forwarded to the:-

1. Incharge Unit Concerned
2. Head of Class-IV

Kayum Shah
Medical Superintendent
DHQ Teaching Hospital DIKhan

Kayum Shah
Medical Superintendent
DHQ Teaching Hospital DIKhan

آڈر لینے سے انکار دیا ہے

ساحری کی
ایوب خاور ڈیوٹی کرنے سے انکار ہے

مکمل ہے
Mohal M. Saleem
24-5-15

ANNEXURE "D"

283

Ph# 0966-9280201/ Fax # 0966-9280446/DIK

Office of the Medical Superintendent

DHQ Teaching Hospital DIKhan

No. 5269 / PF

Dated 31/7 /2015

To

The Director General Health Services
Khyber Pakhtunkhwa
Peshawar

Subject: APPEAL

Memo:

Reference your office letter No.6474/Personnel dated 17.06.2015.

The comments as asked for in your letter under reference are enclosed
for further necessary action.

Kayim Shah
% Medical Superintendent
DHQ Teaching Hospital DIKhan

The comments upon the departmental appeal of Muhammad Ayub Ex-Ward Orderly DHQ Teaching Hospital DIKhan are submitted as under:-

1. Muhammad Ayub Ex-Ward Orderly was transferred to Female Medical Ward vide this office endorsement order No.2567-72 dated 27.04.2015 (enclosed), but he refused to receive and obey the transfer order and join the new assignment. Report by the Naib Qasid is enclosed.
2. His explanation was called but he refused to receive the explanation order issued vide this office letter No, 3722 dated 04.05.2015 (enclosed). Report of Naib Qasid is enclosed:-
3. He was served with a show cause notice but the office was unable to find him for service purpose because he oftenly remained absent form Hospital and intentionally avoided to receive the show cause Notice. Copy of the Show Cause Notice is enclosed.
4. On query, the incharge of the Class-IV submitted a written report to the undersigned (copy enclosed) that he is chronic absentee and is absent from duty since long. Report of the incharge is enclosed.
5. Later on he submitted a reply (enclosed) to the show cause notice but it was not satisfactory. He was given a chance of personal hearing but he did not avail it.
6. His plea about the illness of his wife is a lame excuse, because he would have applied for leave instead of absenting himself from duty.

It is not out of place to mention that after his termination order a Senior Professor of the Hospital visited my office and appreciated my order of his termination and informed me on the condition of not naming,

کہ مجھے فیمیل میڈیکل سٹوڈنٹس بار باریہ شکایت کرتی تھیں کہ وارڈ میں ڈیمانسٹریشن کے دوران محمد ایوب کھڑکی کے پیچھے کھڑے ہو کر بیہودہ اور شرمناک حرکات کرتا تھا اور ہمیں اشارے کرتا تھا ان بے حیا حرکات کا بیان کرنا بھی مناسب نہیں چنانچہ فیمیل میڈیکل سٹوڈنٹس نے وارڈ میں آنا بھی چھوڑ دیا تھا لگتا ہے اس وقت ہسپتال کی ایڈمنسٹریشن کمزور تھی اس لیے محمد ایوب کے خلاف ایکشن عمل میں نہیں لایا گیا۔

The retention of a class-IV of such low character, who does not hesitate to harass the female medical students belonging to respectable families of the province is detrimental for the Hospital.

Muhammad Ayub Ex-Ward Orderly was proven guilty of misconduct, insubordination and loose character. His departmental appeal devoid of any merit is liable for straight-away dismissal.

Kayim Shah
Medical Superintendent
DHQ Teaching Hospital DIKhan



DIRECTORATE GENERAL HEALTH
SERVICES, GOVT: OF KHYBER
PUKHTUNKHWA, PESHAWAR.
NO 11148 /PERSONNEL
DATED 29 /10/2015.

To,

Mr. Muhammad Ayub Ex: Ward orderly
DHQ Hospital D.I Khan.

Subject:
Memo:


APPEL AGAINST THE OPPRESSIVE/UNLAWFUL DISMISSAL.

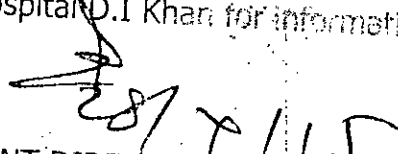
Reference your appeal dated 22.05.2015, on the subject noted
above.

Your appeal for re-instatement in to Govt Service has
been considered by the competent authority and can not, it is regretted be
acceded to as your termination has been issued after observance of all the codal
formalities as required under the E&D Rules.

No 11149 /Personnel

Copy forwarded to the M.S DHQ Hospital D.I Khan for information.


ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR


ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

Performance of duties on his earlier post has no
relevancy whatsoever with the present posting. Therefore, performance