

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No 856/2016

Date of Institution... 24.08.2016

Date of decision... 04.10.2017

Mst. Bibi Hasina D/O Ayub Khan presently LHV at BHU Baidara District, Swat.
... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Health and 2 others.
... (Respondents)

MR. INAYATULLAH,
Advocate

... For appellant.

MR. MUHAMMAD ZUBAIR,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was awarded major penalty of reduction to lower stage in time scale by the competent authority on 04.02.2016 and thereafter another order was passed by the same authority on 12.2.2016 whereby the appellant was directed to deposit salary for different periods mentioned in the said order. Against these orders appellant filed a departmental appeal on 02.3.2016 which was decided on 25.7.2017. The appellate authority set aside the major penalty on the ground that the very show cause notice was defective. However, the appellate authority

maintained the order dated 12.02.2016 regarding recovery of salary. The appellate authority also converted the major penalty into minor penalty of withholding annual increment for one year. The appellant challenged the appellate order through the present service appeal on 24.08.2016.

ARGUMENTS

4. The learned counsel for the appellant argued that the appellate authority in its order dated 25.7.2016 itself admitted that show cause notice issued by the competent authority was defective then how the appellate authority could convert the same into minor penalty when show cause notice was defective. He further argued that the recovery of salary was also illegal on two counts, firstly that the enquiry conducted by the department being defective has no legal force and secondly the periods mentioned in the order dated 12.2.2016 have fully been explained by the appellant in her memorandum of appeal and in this regard the appellant has also annexed full record of sanction of leave or her attendance sheets for the different periods. That the appellate order is liable to be set aside.

5. On the other hand, the learned Deputy District Attorney argued that as the right of filing of written reply was closed by this Tribunal on 06.05.2017, there is no reply on the file and no representative of the department has come forward to assist him.

CONCLUSION

6. The very appellate order dated 25.7.2017 is sufficient to destroy the case of the department when it had been admitted by the authority that the very show cause notice was defective then how could the authority convert one type of penalty to another type of penalty. How the show cause notice can be taken to be devoid of defect for minor penalty. The period of absence mentioned in the order

dated 12.02.2016 has fully been explained by the appellant in the memo. of appeal as well as by the learned counsel for the appellant today detail of which is as under:-

The period mentioned in S.No. 1 of the table given in the order dated 12.2.2016 is the period when the appellant was on leave. Similar is the case of the period mentioned at S.No. 2 to 5 of the table. The period mentioned at S.No. 6 to 8 of the table has been fully explained by annexing attendance sheets of the appellant wherein the appellant has been marked as present.


The department by not submitting reply and not submitting the detail and findings of the enquiry report had itself put them in a position of no defence to the allegations/averments of the memo. of appeal which are taken to be true in absence of any written defence.

7. As a sequel to the above discussion, this appeal is accepted and both orders dated 4.2.2016 and 12.2.2016 are set aside. Parties are left to bear their own costs.

File be consigned to the record room.



(Gul Zeb Khan)
Member




(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
03.10.2017

Appeal No. 856/2016
Mst. Bibi Hasina vs Health Deptt.

06.07.2017

Appellant in person and Mian Amir Qadar, Deputy District Attorney alongwith Amjad Ali and Yar Gul Assistants for the respondents present. On the previous date adjournment was given to the respondents on payment of cost of Rs. 1000/- but they failed to file written reply and requested for further adjournment. The right of respondents for submission of written reply is closed. The appeal is assigned to D.B for final hearing for 04.10.2017 at camp court, Abbottabad.

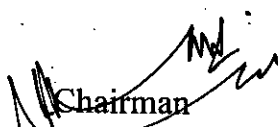

Chairman
Camp court, Swat

4.10.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.


Member

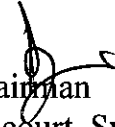

Chairman
Camp Court, Swat.

ANNOUNCED
4.10.2017

856/2016


06.1.2017

Agent of counsel for the appellant and Mian Amir Qadar, GP for the respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 10.03.2017 before S.B at camp court, Swat.


Chairman
Camp court, Swat


10.03.2017

Clerk of counsel for the appellant, M/S Amjad Ali, Yar Gul and Fazle Amin, Assistants alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 04.05.2017 before S.B at camp court, Swat.


Chairman
Camp court, Swat

04.05.2017

Appellant alongwith her counsel present. Mr. Fazle Amin, Assistant with Mian Amir Qadar, Deputy Attorney for the respondents also present. Written reply by respondents not submitted despite last opportunity. Representative of respondent-department requested for further time for submission of written reply. Last opportunity is further extended subject to payment of costs of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments on 06.07.2017 before S.B at Camp Court Swat.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat

08.09.2016

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as LHV when subjected to enquiry on the allegations of absence and vide impugned order dated 25.7.2016 salaries drawn by the appellant for the period mentioned in the enquiry report were ordered to be recovered from the appellant and, additionally, minor penalty in the shape of withholding of one annual increment for one year was also imposed against her by the appellate authority and hence the instant service appeal on 24.08.2016.

That the impugned order is against facts and law as the enquiry was not conducted in the mode and manners prescribed and the same was defective in nature and no proper opportunity of hearing afforded to the appellant.


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/comments for 11.11.2016 before S.B at camp court, Swat.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court, Swat.

11.11.2016


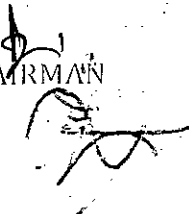
Due to curfew in the area none present for the parties. Fresh notices be issued to them. To come up for written reply/comments on 06.01.2017 before S.B at camp court, Swat


Chairman
Camp court, Swat

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 856/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/08/2016	<p>The appeal of Mst. Bibi Hassina presented today by Mr. Inayatullah Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	26-08-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on. <u>08-09-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA

Mst. BiBi Hasina

Appeal No. 856/16

VERSUS

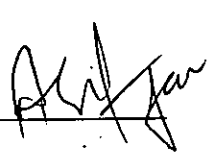
Government of Khyber PakhtunKhwa through Secretary Health etc

INDEX

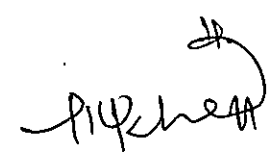
S.No	DESCRIPTIONS	ANNEXURE	PAGE NO
1.	Appeal along with Certificate		1-7
2.	Affidavit		8
3.	Memo of Addresses		9
4.	Copy of the appointment Order	A	10
5.	Copy of the office order granting earned leave	B	11
6.	Copy of cancellation of leave and leave granting order	C & D	12-13
7.	Copies of order dated 04-12-2016 and dated 12-02-2016	E & F	14-15
9.	Copy of the departmental appeal and impugned order upto the extent of recovery of monthly salary and withholding of annual increment.	G & H	16-22
10.	Copy of the register of attendance	I	23-29
11.	Copy of certificates from the concerned organization	J & K	30-31
12.	Copy of the office letter No. 3935 dated 18-03-2016, attendance register for dated 18-03-2016.	L & M	32-33
13.	Wakalat Nama		34

Appellant

Through Counsels


Muhammad Arif Jan
Advocate High Court

Peshawar
Off: No. 210, Almuntaz Hotel
G.T road, Peshawar.
Cell No: 0333-2212213


Inayatullah Khan
Advocate High Court
Off: D-17, Continental Plaza
Makan Bagh Mingora Swat.
Cell No: 0345-9440090

BEFORE THE SERVICE TRIBUNAL, KHYBER

PAKHTUNKHWA

Appeal no. 856/2016

Mst. BiBi Hasina D/o Ayub Khan presently LHV at BHU, Baidara
District Swat. ...APPELLANT

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 881

Dated 24-8-2016

1. Government of Khyber PakhtunKhwa through Secretary Health.
2. Director General Health Services KP at Peshawar.
3. District Health Officer Swat at Gulkada, Saidu Sharif District Swat.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ORDER DATED 25-07-2016, TO THE EXTENT OF RECOVERY OF MONTHLY SALARIES AND WITHHOLDING OF ANNUAL INCREMENT FOR ONE (1) YEAR. WHERE BY THE RESPONDENT No. 2 ALLOWED THE DEPARTMENTAL APPEAL OF THE APPELLANT UPTO THE EXTENT OF REDUCTION TO LOWER STAGE IN TIME PAY SCALE AND MAINTAINED THE ORDER OF THE RESPONDENT No. 3 UPTO THE RECOVERY OF MONTHLY SALARY AND AWARDED PENALTY OF WITHHOLDING ANNUAL INCRMENT FOR ONE (1) YEAR.

Filed to-day

Registrar

24/8/16

PRAYER:

On acceptance of the instant service appeal the impugned orders of the Respondents Dated 25-07-2016 upto the extent

vide order
sheet dated
6/7/17
Right of
written reply
of Respondents
closed.

of recovery of monthly salary from the Appellant, mentioned in the Order dated 12-02-2016, and withholding of annual increment of the Appellant may kindly be set aside and Respondents may be restrained from recovery of the monthly salary mentioned in the impugned order.

Respectfully Sheweth:

- 1. That the Appellant was initially appointed as LHV in Govt: BHU, Baidara Swat and served the Department upto the entire satisfaction of her superiors and have always taken keen interest in her Job (Copy of the appointment Order is annexed as annexure "A").*
- 2. That the Appellant applied for earned leave for November 2014 to May 2015, which was granted by the competent authority (Copy of the office order granting earned leave is attached herewith as annexure "B").*
- 3. That the Appellant due to transfer of EPI Technician from BHU, Baidara cancelled her earned leave and resumed the duty on 10-02-2015 and later on due to the severe illness of Appellant mother, the Appellant applied for leave which was granted from 01-06-2015 to 31-07-2015 (Copy of cancellation of leave and leave granting order are annexed as annexure "C" & "D" respectively).*
- 4. That due to the malafide intentions and some unknown complaints, the Respondent No. 3 (DHO Swat) issued an illegal and defective show cause notice to the Appellant without any proper inquiry and awarding opportunity of being heard and thus issued Two (2) Office Orders No. 1390-95 / CS-4 dated 04-02-2016 and Officer Order No. 1845 dated 12-02-2016, while awarding major penalty by reduction to lower stage in time scale and directed the Appellant to deposit the monthly salaries*

of the months mentioned in the order dated 12-02-2016 (Copies of order dated 04-02-2016 and dated 12-02-2016 are annexed as annexure "E" & "F" respectively).

5. That the Appellant preferred Departmental Appeal against both the Orders dated 04-02-2016 and dated 12-02-2016, which was allowed upto the extent of order dated 04-02-2016, by setting aside the major penalty of reduction to the lower stage in time pay scale, while maintained upto the order dated 12-02-2016 (Upto the recovery of monthly salary and imposed penalty of withholding of annual increment for one (1) year, through the impugned order dated 25-07-2016) (Copy of the departmental appeal and impugned order upto the extent of recovery of monthly salary and withholding of annual increment is attached as annexure "G" & "H" respectively).
6. That the impugned order is against the Law, Service rule, Justice, Shariah Nizam-e-Adal Regulation 2009 (Being special Law), therefore no value in the eyes of Law hence liable to be set aside on the following grounds *Interalia* amongst others.

GROUND:

- a) That the impugned order is illegal, against the service Law "E" and "D" rules 1973, facts and materials on record and hence liable to be set aside.
- b) That no opportunity was provided to the appellant but the Respondent illegally issued the impugned orders.
- c) That the impugned order is worst example of colorable exercise of power by the Respondents as the Respondents first issued office order No. 1390-95/CS-4 dated 04-02-2016 and later on malafide issued

another order No. 1845 dated 12-02-2016, therefore, both the orders of the Respondents are against principles of natural justice, fair-play and equity.

- d) That the impugned order is defective as the show-cause notice on the basis of which the order dated 04-02-2016 and dated 12-02-2016, were issued were declared defective by the Respondent No. 2 (DG Health) himself.
- e) That the order of the Respondent / impugned order is of no value in the eyes of Law as all the proceedings was declared null and void, therefore, the Respondent can't issue the impugned order on the basis of defective inquiry / show-cause notice and thus can't issue order for withholding of annual increments for One (1) Year, nor can issue order for depositing of the monthly salary mentioned in the impugned order.
- f) That the Appellant performed her duty according to Law and rules and she never remained absent from her duties, while the time / period mentioned in the order dated 12-02-2016, she was either on leave for some of the period, properly issued by the competent authority, are performed and attended her duty regularly, therefore, she can't be directed for depositing of the monthly salary of the period which she was present and performed her duties or she was on leave Copy of the leave granting order is already attached as annexure "D". (Copy of the register of attendance is attached as annexure "I").
- g) That the appellant had not spent even a single minute of official duties in her own affairs but discharged her duties for the prescribed limit of time fixed by the Department and during these hours, the Appellant had not remained absent even for a single minute.

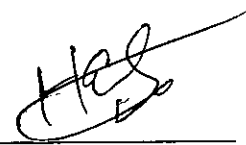
- h) That the Appellant was neither charge sheeted nor served with any notice or memo of allegation under the law thus all the proceedings were conducted illegally by the Respondent / Competent Authority.
- i) That the Respondents neither conduct any inquiry nor proved any allegation against the Appellant rather the show-cause notice on the basis of which Appellant was awarded harsh penalty and was directed to deposit the monthly salary / amount mentioned in the impugned order has been defective by the Respondent No. 2 himself moreover it is clear from the certificates of the HUIJRA Organization that, the Appellant served the Organization part timely for four (4) months, but despite that fact the Appellant was directed to deposit monthly salary of Seven (7) months (Copy of certificates from the concerned organization is attached as annexure "J" & "K").
- j) That the malafide intentions of the Respondent is also clear from office letter No. 3935 dated 18-03-2016 of the Respondent No. 3, whereby the Respondent No. 3 issued warning letter to the Appellant about her absentee from duty while, it is pertinent to mention that, the Appellant performed her duty on the same day which is evident from the attendance register of the concerned BHU, Baidara Swat (Copy of the office letter No. 3935 dated 18-03-2016, attendance register for dated 18-03-2016 is attached as annexure "L" & "M").
- k) That no chance of personal hearing was given to the Appellant, without providing the right of hearing to the Appellant and thus Appellant was condemned unheard, which is not only against the service law rules, but against the natural justice and Shariah Nizam-e-Adal Regulation 2009 (Being Special Law).

- l) That the Appellant served the Department for a considerable time but was awarded major penalty which could not be awarded while ignoring the service of the Appellant.
- m) That despite the fact the Appellant performed her duty efficiently, besides the fact that, the Appellant was busy in the care of her aged ill mother, who was suffering from cancer, but while ignoring this fact the Respondent without providing opportunity imposed such a major penalty against the law and Shariah, which is untenable in law and liable to be set aside.
- n) That the Respondent mentioned incorrect period for depositing the salaries while the Appellant was on legal leave duly issued by the competent authority, while it is pertinent to mention here that, the Appellant duly performed her duty in some of the period (Months) mentioned in the order dated 12-02-2016 (Copy of the attendance register is attached herewith).
- o) That there is no evidence at all to connect the Appellant with the negligence or obstruction in duty. In such situation, the Appellant were entitled to be exonerated but awarding the major penalty to a civil servant amounts to gross illegality and patterned in justice.
- p) That there is no material evidence in the hand of the Respondents to substantiate his impugned order and inquiry and thus the proceeding against the Appellant requires to be struck down.
- q) That despite the fact of hectic efforts, the Appellant had not been provided to produce ample evidence in defense to rebut the disciplinary proceedings and charge sheet served upon the Appellant, so the entire proceedings conducted by the Respondents are devoid of all legal force rendering the same unwarranted and illegal.

- r) That the inquiry officer was not competent to proceed against the Appellant legally as well as under the rules.
- s) That the Acts of omissions on the part of the Respondents / Respective authorities are in expression violation of section 24-A of the General clauses Act 1987, which provide that, an authority rested with any power is bound to exercise the same justly, fairly and reasonably.

It is therefore, very humbly prayed that, on acceptance of the instant appeal the impugned orders of the Respondents No. 2 Dated 25-07-2016 upto the extent of monthly salary from the Appellant, mentioned in the Order dated 12-02-2016, and withholding of annual increment of the Appellant and order dated 12-02-2016 may kindly be set aside and Respondents may be restrain from recovery of monthly salary mentioned in the impugned order.

Appellant

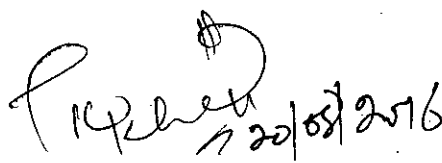


Bibi Hasina

Certificate:

LHV at BHU, Baidara, Swat

It is certified as per information of my client that, no such like appeal is pending nor decided by this or any other competent court of same jurisdiction



Advocate

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA

Mst. BiBi Hasina

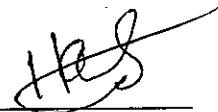
VERSUS

Government of Khyber PakhtunKhwa through Secretary Health etc

AFFIDAVIT

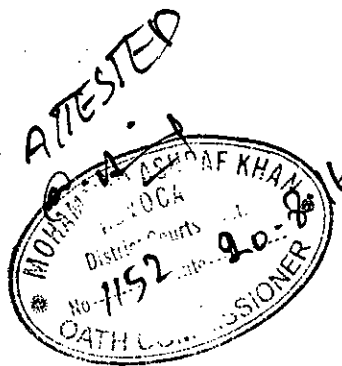
It is stated on oath that all the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed therein from this Hon'ble Court.

Deponent



BiBi Hasina

LHV at BHU, Baidara Swat



BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA

Mst. BiBi Hasina

VERSUS

Government of Khyber PakhtunKhwa through Secretary Health etc

MEMO OF ADDRESSES

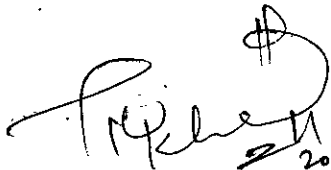
Address of the Appellant:

Mst. BiBi Hasina D/o Ayub Khan presently LHV at BHU, Baidara
District Swat.

Address of the Respondents:

1. Government of Khyber PakhtunKhwa through Secretary Health at
Civil Secretariat Peshawar KpK.
2. Director General Health Services at Civil Secretariat KP at Peshawar.
3. District Health Officer Swat at Gulkada, Saidu Sharif District Swat.

Appellant
Through Counsel


20/08/2016

Inayatullah Khan

&

Muhammad Arif Jan

Advocates High Court

10

A

NO. 7190 / Estt: P.F Dated Saidu Sharif the. 9/7/1995
From: 7190

The Divisional Director Health Services, Malakand Divn: Swat.

TO, Bibi Masina D/O Ayub Khan
Village & P.O Baidara Tehsil Matta Swat.

SUBJECT:- APPOINTMENT AS A LADY HEALTH VISITOR.
Memo:-

Reference Director Health Services, N.W.F.P.,
Dated,

Peshawar No.

You are hereby offered a post of lady health visitor in the scale of DPS- 9 (1605-97-3060) plus usual allowances as admissible under the rules. The appointment will be subject to the following terms and conditions:-

- 1)- She is domiciled in N.W.F.P.
- 2)- She is declared medically fit for Government Servant.
- 3)- She will not be entitled to any TA/DA for Medical Examination and joining the 1st appointment.
- 4)- She is liable to serve any where in N.W.F.P.
- 5)- She will be governed by such rules and order as may be issued by the Govt: for the category of Government Servants to which she belong.
- 6)- If she wish to resign at any time she will resign in writing by giving prior notice of one month and will continue to serve the Govt: till the acceptance of resignation by the competent authority failing which she will have to forfeit one month pay. However she is under bond to serve the Health Department for a period of five (5) years.
- 7)- Her appointment in the Health Services Deptt: is purely temporary and her service may be terminated without any reasons being assigned at any time irrespective of the fact that she is holding the post other than one to which she was originally recruited.

If you accept the appointment order on the above mentioned terms and conditions you should report for duty, to DHO Dir at Timergara

[Signature]
Divisional Director Health Services, Malakand Divn: Swat.

NO. / Estt: P.F
Copy forwarded to
1- District Health Officer, Dir at Timergara for information and n/action.
2- ~~DMS, Malakand Divn: Swat.~~

Divisional Director Health Services, Malakand Divn: Swat.

NO. / Estt: P.F
Copy for warded to Director Health Services, N.W.F.P, Peshawar for information with reference to above please. *G. A. G. A.*

Divisional Director Health Services, Malakand Divn: Swat.

S/Faraz

ETC
14/10/2016
Petitioner
Counsel

Copy may be admitted at DHO Dir at Timergara

5/7/95

11



District Support Unit,
 People's Primary Healthcare Primary Healthcare (PPHI)
 District Swat
 Phone No. 0946-721240, Fax No. 0946-721241, Email: pphiswat@gmail.com

B

No: PPHI/DSU-Sw-M&E-12- 36/
 Dated: 28/10/2014

OFFICE ORDER

Ms. Bibi Haseena, LHV, working at BHU Baidara is hereby granted leave for 180 days w.e.f 30-10-2014 to 27-04-2015 (120 days with full pay & 60 days with half pay) according to her service book record, She will report to the same station after expiry of the granted leave.

As per record provided by DHO letter No. 5037/PF/L-2 dated, 23/10/2014, Ms. Bibi Haseena is entitled for the said leave.

District Manager,
 PPHI Swat

Copies forwarded to:

1. District Health Officer Swat for information and record please.
2. Mr. M.C BHU Baidara for information and record please.
4. Official concerned.
5. Office copy.

District Manager,
 PPHI Swat

etc
 14/11/2014
 20/8/16
 PPHI Swat
 concerned

[Handwritten mark]

12

"e"



District Support Unit,
People's Primary Healthcare Initiative (PPHI)
District Swat
Phone No. 0946-721240-41, Fax No. 0946-721240, Email: pphiswat@gmail.com

No: PPHI/DSU-Sw-M&E-12-294
Dated: 02-03-2015

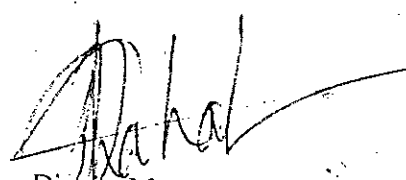
OFFICE ORDER

The leave granted to Ms. Bibi Hasina LHV at BHU Baidara total 180 days i.e. from 30/10/2014 to 27/04/2015. In this connection she availed only 104 days leave. Now she want to cancel unavailed leave i.e. 76 days. The unavailed leave portion i.e. 76 days is hereby cancelled.

District Manager
PPHI Swat

Copy to:

1. District Health Officer Swat for information please.
2. Executive (F&A) PPHI Swat.
3. I/C BHU Baidara for information please.
4. Official concerned.


District Manager
PPHI Swat

CTC

14/2/2015
Retirement
counsel

11/6/2015



13

District Support Unit,
People's Primary Healthcare Initiative (PPHI)
District Swat
Phone No. 0946-721240-41, Fax No. 0946-721240,
Email:pphiswat@gmail.com

13

No: PPHI/DSU-Sw-M&E-12-197
Dated: 01-06-2015

OFFICE ORDER

As record provided by the DHO Swat vide his office letter No. 7660/PF, dated 01-06-2015.

Mst. Bibi Haseena LHV attached to BHU Baidara is granted 60 days leave w.e.f 01-June-2015 to 31st-July-2015 with full pay except conveyance allowance.

District Support Manager,
PPHI Swat

Copy to:

1. District Health Officer (Swat) for information and record please
2. Executive (F&A) PPHI Swat to deduct conveyance allowance from her salary.
3. I/C BHU Baidara for information please
4. Office copy

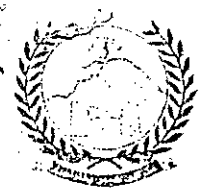
District Support Manager,
PPHI Swat

CTC #
14/cheq
20/8/16
petitioner counsel.

14

E

3



**OFFICE OF THE DISTRICT HEALTH OFFICER
GULKADA DISTRICT SWAT**

Phone No: 0946-9240139, Fax No: 0946-9240215

Email: edohswat@yahoo.com

Dated: 04/12/2016

Nov

OFFICE ORDER.

1. WHEREAS disciplinary proceeding under E&D rules 2011 Act, initiated against Mrs. Bibi Haseena Junior PHCT (MCH) attached, BHU: Baidara Swat for the charges leveled against her.
2. AND WHEREAS an enquiry was conducted against her through inquiry committee as per provision of Section -05, E&D rules 2011 and the charges leveled against her were found true.
3. AND WHEREAS Show Cause Notice was served upon her 18301/PF dated 29/12/2015. to which she replied.
4. AND WHEREAS She was personally heard on 15/1/2016 by the competent authority but could not prove her- self as innocent.
5. Therefore I Dr. Said Ali Khan District Health Officer Swat being competent authority in exercise of powers conferred under Khyber Pakhtunkhwa Govt: E&D rules 2011, to impose major penalty of "reduction to lower stage in a time scale upon " Mrs. Bibi Haseena Jr. PHCT (MCH) LHV attached to BHU: Baidara Swat with immediate effect.

Sd/xxxxxx
DISTRICT HEALTH OFFICER
DISTRICT SWAT AT GULKADA.

No 1370-9517/CS-4

Copy forwarded to the:-

- 01- Deputy Commissioner Swat for information please.
- 02- District Account Officer Swat for information please.
- 03- Account Section of this office for information and necessary action as well as to arrange for recovery of salaries received during the period in question.
- 04- The above named official concerned for information.
- 05- Medical officer I/C. BHU: Baidara Swat for information.

etc
14/12/16
Petitioner counsel

DISTRICT HEALTH OFFICER
DISTRICT SWAT AT GULKADA.

15

F



OFFICE OF THE
DISTRICT HEALTH OFFICER
BULKADA, SAIDU SHARIF SWAT,
Phone No. 0946-9240139,
Fax No. 0946-9240215
Email. edohswat@yahoo.com

No. 1845 /Acctt:

Dated; 12 /02/2016.

From;

The District Health Officer
District Swat.

To,

Mrs. Bibi Hasina
Jr. PHC Technician (MCH) P.No. 00074464
BHU Baidara Swat.

Subject:- DEPOSITING OF SALARIES.
Memo;

In continuation of this office Show cause notice issued vide No. 18287-92/PF dated: 28/12/2015, You are hereby directed to deposit the drawl of salaries wef 13 October 2014 to 31/12/2014 & 18/05/2015 to 09/10/2015 amounting to Rs: 222677/- (Two Lacs Twenty Two thousand Six Hundred & Seventy Seven only) as per detail given below into Government Treasury through challan and copy submit to this office for record.

S.No	Period	Total Monthly salaries	Total Amount
01	Wef: 13/10/2014 to 31/10/2014 (19/31)	28735/-	17611
02	Pay for 11/2014	28735/-	28735
03	Pay for 12/2014	29286/-	29286
04	Wef: 18/05/2015 to 31/05/2015 (14/31)	29286/-	13226
05	Pay for 6/2015	29286/-	29286
06	Pay for 7, 8 & 9 /2015	31770/-	95310
07	Wef: 1/10/2015 to 9/10/2015 (9/31)	31770/-	9223
		Total Rs:	222677

DISTRICT HEALTH OFFICER
DISTRICT SWAT

CTC
14/2/16
20/8/2016
Petitioner's Counsel

(16)

Annex "G"

BEFORE THE DIRECTOR GENERAL

HEALTH SERVICE, CIVIL SECRETARIAT KPK AT PESHAWAR

Bibi Hasina D/o Ayub Khan LHV in BHU Baidara, Swat.....Appellant

VS

District Health Officer District Swat..... Respondent

DEPARTMENT APPEAL AGAINST THE ORDER OF THE DHO SWAT WHEREBY THE RESPONDENT (DHO SWAT) ILLEGALLY, WITHOUT LAW, SHARIA AND AGAINST THE SERVICE RULES, REDUCED THE SERVICE OF THE APPELLANT TO LOWER STAGE IN A TIME SCALE UPON VIDE ORDER NO. 1370-95/9F/CS-4 DATED 04-02-2016.

PRAYER AN APPEAL:

On acceptance of this Departmental appeal the order of respondent (DHO SWAT) may be set aside and the appellant may be permitted to work in the same scale, moreover the order for depositing of salaries dated 12-02-2016 may also be set aside.

Respectively Sheweth:

1. That the appellant was appointed as L.H.V in Govt. B.H.U Baidara Swat up to the entire satisfaction of her superiors and served the Department for considerable tenure.
2. That the appellant had discharged her duties in the capacity of civil servant to the almost ability competency and keen interest but some hidden figures are working against the appellant with malafidde intensions just to harass the appellant by making various false and frivolous complaints.
3. That the appellant applied for ^{earned leave} year leave for the month of November December of 2014 till 2015 which was granted and the appellant was granted six months earned leave (Copy of the order granting six months earned leave is attached herewith).

CTC dt
14/2/15
Residence
Council

4. That in account on transfer of EPI technician namely Qadarmand from B.H.U Baidara. The appellant on humanitarian ground and in order to avoid inconvenience to the public at large and patient and in order to save the dignity and honor of the department resumed duty on 10-02-2015 by waving remaining earned leave because on transfer of the said Technician the public at large were faced to tremendous difficulties and the appellant being a pious fellow for the sake of God started to rendered her service just to serve to poor citizens and again the appellant applied for earned leave on account of illness of her mother the appellant was granted two months earned leave commencing from 01-06-2015 to 31-07-2016.

5. That on account of the patient was in need of the appellant the patient was in need of extremely, precious and costly medicines and in order to cope with this situation, the appellant joined a private part time work in the evening time for one to two hours in a non government organization in the evening time in order to face the monitory laws at the hands of patient (mother of the appellant).

6. That even after resumption of earned leave the appellant has never cause any negligence in the official duty and had performed the same up to the general and routine period prescribed by government department and apart from this if some part time is performed by a person in the evening time it cannot affect the government and department in any manner because the department has nothing to do with the personal time of the civil servant. Civil servant is only supposed to discharge time which ends 2:00 to 3:00pm and commencing from 8:00 or 8:30 am and in these specified time the appellant has no spent even a single minute outside the B.H.U and has discharged her official duties in a very best of ability and capability.

7. That during the part time job commencing in the evening as per understanding of the appellant with the concerned organization the working hour of the department cannot be affected in any manner and this some unknown figures while misleading the heads of the department made certain complaints against the appellant that the appellant is serving in dual capacity in government department. Though the appellant served part time job in the evening for one to two hours. In nongovernmental organization

(TC H)
 14/12/18
 Retention
 Counsel
 20/18

This act of the appellant has not affected the official hours of the department in any manner and the appellant were continuously and regularly discharged her duties with the prescribed time facts by the department from time to time but on account of some misconception on the false, frivolous application against the appellant, the D.H.O. Swat conducted / initiated disciplinary proceedings against the appellant and during the said proceedings while passing the order No. 1390-951CS-4 dated 04/02/2016 and latter on the appellant was awarded major penalty by reduction to lower stage in time and later on mala fide issued another order No. 1845 dated 12/02/2016 directed the appellant to deposit the salaries of the months mentioned in the impugned order No. 1845 dated 12/02/2016. (Copy of both the orders dated 04/02/016 and order dated 12/02/2016 are attached herewith).

- 8. That both the impugned orders of the respondent are against the law, service law, rules, justice, Shariah and Nizam-e-Adal Regulation, 2009 (being special law), therefore, no value in the eye of law, hence the orders of respondents are liable to be set aside on the following grounds amongst others.

GROUNDS:-

- a) That the orders of respondent are illegal, against the service law E and D rules 1973, facts and materials on record and hence liable to be set aside.
- b) That no opportunity was provided to the appellant but the respondent illegally issued the impugned two orders.
- c) That the impugned orders are worst example of colorable exercise of power by the respondent, as the respondent first issued office order No. 1390-95/CS-4 dated 04/02/2016 and later on mala fide issued another order No. 1845 dated 12/02/2016, therefore, both the orders of the respondent is against principle of natural justice, fair-play and equity.
- d) That the respondent cannot issued two orders against the

ETC
11/2/16
20/8/16
Retirement
counsel

- e) That the appellant had not spent even a single minute of official duties in her own affairs but discharged the duties for the prescribed limit of time fixed by the department and during these hours, the appellant had not remained absent even for a single minute.
- f) That the evening time is a private time specified for self-services and when a person consumes that time in the earning of fair and Rizq-e-Halal and waves his comfort and easement in a private organization for a limited time of one to two hours, the government has got nothing to do with it. It does not affect the official duties and by no stretch of imagination it can be held that when a person gives certain time in the evening to an Organization not a government department and earn some money in order to cope with huge medical expenses of her poor and ill mother. It cannot be termed as an offence or an act against the discipline, but the department has to ensure himself that the incumbent is not serving in any other government department the disciplinary action would be justified and confined to the circumstances when the civil servant adversely affect the only hours or engage himself more than one government services, but this is not case with the appellant, the appellant properly attended her duties prescribed by rules and law.
- g) That the appellant was neither charge sheet nor served with any notice or memo of allegation.
- h) That the respondent neither conduct any inquiry nor proved any allegation against the appellant,
- i) That no chance of personal hearing was given to the appellant, without providing the right of hearing to the appellant and thus appellant was condemned unheard, which is not only against the service law rules, but against the natural justice and Shariah Nizam-e-Adal Regulation, 2009 (being special law).
- j) That the appellant served the department for a considerable time but was awarded major penalty which could not be awarded while ignoring the service of the

CTC
 P. W. Khan
 Petitioner
 Counsel
 20/8

- k) That the appellant was busy in the case of her aged ill-mother, who was suffering from cancer, but while ignoring this fact the respondent without providing opportunity imposed such a major penalty against the law and Shariah, which is untenable in law and liable to be set aside.
- l) That the respondent mentioned incorrect period for depositing the salaries while the appellant was on legal leave duly issued by the competent authority, while it is pertinent to mention here that the appellant duly performed her duty in some of the period (months) mentioned in the order dated 12/02/2016.
- m) That there was no evidence at all to connect the appellant with the negligence or obstruction in duty. In such situation, the appellant were entitled to be exonerated but awarding the major penalty to an innocent civil servant amounts to gross illegality and patterned in justice.
- n) That even the law of the land has given special relaxation concession to certain class of citizens including the women folk, which requires to be viewed with great leniency and soft attitude, but the appellant has been dealt with otherwise by the inquiry officer.
- o) That there is no material evidence in the hand of inquiry officer to substantiate his impugned order and inquiry and thus the proceedings against the appellant requires to be struck down.
- p) That despite the fact of hectic efforts, the appellant had not been provided to produce ample evidence in defence to rebut the disciplinary proceedings and charge sheet served upon the appellant, so the entire proceedings conducted by the inquiry officer are devoid of all legal force rendering the same unwarranted and illegal.
- q) That the inquiry officer was not competent to proceed against the appellant legally as well as under the rules.

CTE
 Retiree
 Counsel
 20/8

It is, therefore, humbly prayed that on the acceptance of this departmental appeal, the impugned orders below may kindly be set aside and the appellant be allowed to continue her service in the old time, pay, scale and the respondent may also be restrained from depositing the salaries mentioned in the order dated 12/02/2016.

Hasina
Appellant

Bibi Hasina D/o Ayub Khan
L.H.V. in B.H.U. Baidara, Swat
CNIC No. 15601-0972208-2
Cell No. 0345-3529885

Dated: 02nd March, 2016

CTC #
Mphar
Petition 20/8
Council

22

Annex H

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR



No. 5225 /AE-VI

Dated 25/07/2016

To


The District Health Officer,
Swat.

Subject: - DEPARTMENT APPEAL AGAINST THE ORDER OF THE DHO SWAT WHEREBY THE RESPONDENT (DHO SWAT) ILLEGALLY, WITHOUT LAW, SHARIA AND AGAINST THE SERVICE RILES, REDICED THE SERVICE OF THE APPELLANT TO LOWER STAGE IN A TIME SCLAE UPAN VIDE ORDER NO. 1370-95/9F/CS-4 DATED 04.02.2016.

Kindly refer to the subject noted above and to inform that Ms. Bibi Haseena LHV was personally heard today on 10.06.2016. She admitted to have served in an NGO besides Govt: service.

You have simply issued her reduction to lower stage in time scale, Moreso the show cause notice is defective, therefore the order issued by you is withdrawn.

The salaries drawn by LHV for the period mentioned in inquiry report be recovered and minor penalty of withholding annual incement for one year may be imposed upon her under intimation to this Directorate.


22/7/16
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR.

15/06

CTC #
14/06/16
petitioner counsel
20/6/16

23

2018

ATTENDANCE ROLL FOR THMONTH OF SEPTEMBER

NSRF Ruzma No. 114423330661

Sl. No.	Name	Month																															Total Late	Casual Leave		Holidays		REMARKS	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		Current month	To end of Current month	Current month	To end of Current month		
1	Dr. Muhammad P. Zaman																																						
2	Hussain Al...																																						
3	Shahid Khan																																						
4	M-Tech																																						
	Hasina																																						
	Bibi Aysha																																						
	Latv																																						
5	Abdul Jalal																																						
	EPI Tech																																						
6	Saifunnabi																																						
	w/o																																						
7	Muhammad																																						
	w/o																																						
8	Muhammad Hussain																																						
	Beela																																						
9	Gul Nigar																																						
	Devi																																						
10	Alisra																																						

Handwritten note: 14/9/18

Handwritten note: All other matters are under review

Medical Officer
S. H. Baidarwah

24

Report 2019

BHU Baidara, Swat

ATTENDANCE ROLL FOR THE MONTH OF

July 19

2019

GS&PD/WFP/295 F.S. 2300 R. of 100 L.14.10.2000(5)DA-1

No	Name	Days																															Total Lato		Casual Leave		Holidays		REMARKS
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Current month	To end of Current month	Current month	To end of Current month	Current month	To end of Current month	
1	Muhammad Azam																																						
2	Hussain Ah M. tech																																						
3	Shahid Khan M. tech																																						
4	Abdul Jalal IEPV tech																																						
5	Bibi Masina L.H.V																																						
6	Saifun Nadeem W/O																																						
7	Haroon Khan W/O																																						
8	Muhammad Hussain Beshki																																						
9	Masrut L.H.V																																						
10	Gul Nojara Dui																																						

CTC
W/O
Performance
Council

Made with
BW register
ma only
attested

Medical Officer
B.H.U, Baidara Swat

[Signature]

6

No.	Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
0	M. O. S. / Dr. Rashid Khan																														
1	M. Hussain Ali																														
2	M. Tahir																														
3	Shekhar Khan																														
4	Qadar Mawla																														
5	Babar Hashim																														
6	Razi Khan																														
7	Muhammad Hussain																														
8	Genl Nazim																														
9	Abdus Rehaman																														
10	Muhammad Baqar																														

ATTENDANCE ROLL FOR THE MONTH OF

October 2014

(72)

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Handwritten notes and signatures at the top right of the page.

28 3

ATTENDANCE ROLL FOR THE MONTH OF 19

2015

No.	Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total Late		Casual Leave		Holidays		REMARKS		
		Current month		To end of Current month		Current month		To end of Current month		Current month		To end of Current month		Current month		To end of Current month																									
1	Dr. M10 Dr. Azam Khan																																								
2	Hussaini Ali M. Tech																																								
3	Shahid Khan M. Tech																																								
4	Razi Khan w/o																																							24 Feb 9:07 AM	
5	Bibi Hasina L.H.U																																								
6	Muhammad Hussaini BSc/4																																								
7	Saifun Nadeem w/o																																								
8	Genl Nazim Dev																																							142 Retirement Course 20/11/15	
9	Nasir LHS																																								
10	Abdur Rahman W man																																								

142
Retirement
Course
20/11/15

No.	Name	100% Leave					Medical Leave					REMARKS	
		Current month	To end of Current month	Current month	To end of Current month	Current month	To end of Current month	Current month	To end of Current month				
1	D.S. Muhammad												
	Kc. Azam Khan												
2	Hussain, Ali												
	M. Teek												
3	Shahid Khan												
	M. Teek												
4	Abdul Jalal												
	Rafi teek												
5	Babi Husina												
	I. Hav												
6	Soufiana Nahi												
	eulo												
	IKR Khan												
7	Razi Khan												
	w/o												
8	Muhammad												
	Hussaini Beshi												
9	Musrat Fias												
10	Cul Naza Kal												
	Dai												
11	Abduli Rahman												
	w/ Khusnara												

Babi Husina is on leave over 01 June 2015 to 31 July 2015.

My Razi Khan died on 6th June 2015

Camp
Referral
A/C

100% Leave
 30 31
 28 29
 26 27
 25 26
 24 25
 23 24
 22 23
 21 22
 20 21
 19 20
 18 19
 17 18
 16 17
 15 16
 14 15
 13 14
 12 13
 11 12
 10 11
 9 10
 8 9
 7 8
 6 7
 5 6
 4 5
 3 4
 2 3
 1 2

30

J



HUJRA
Village Support Organization

HEAD OFFICE
Near Allah-o-Akbar Masjid, Saidu Sharif,
Swat, Khyber Pakhtunkhwa, Pakistan
Phone: +92946726799, Fax: +92946729016
Email: hujraswat@yahoo.com, info@hujra.org
Website: www.hujra.org

PESHAWAR OFFICE
House # 17/FA-1,
Khushal Khan Khattak Road,
University Town, Peshawar.
Phone: 091-5701206

Ref No: HUJRA/HR/167

Date: 31-July-2015

TO WHOM IT MAY CONCERN

This is to certify that Ms. Bibi Hasina D/O Ayub Khan bearing CINC # 15601-0972208-2 has worked with HUIJA organization part time from 01st Jun 2015 till 31st July 2015 as "Legal Aid Advisor" in our project "Strengthening Rule of Law" at Matta.

During her stay with HUIJA organization she has proved herself to be reliable, dedicated and hardworking. She was further able to sharpen her skills. She has excellent communication skills and was kind to his colleagues as well. Her performance during the said period was "Excellent".

We wish her the very best in her future endeavors. If her work is anything to be judges by, we are certain that she will succeed in whatever she does.

Raja Gul
HR OFFICER
HUIJA



CTC
16/7/15
Parttime Counsel
26/8



HUJRA
Village Support Organization

HEAD OFFICE
Near Allah-o-Akbar Masjid, Saidu Sharif,
Swat, Khyber Pakhtunkhwa, Pakistan
Phone: +92946726799, Fax: +92946729016
Email: hujraswat@yahoo.com, info@hujra.org
Website: www.hujra.org

PESHAWAR OFFICE
House # 17/FA-1,
Khushal Khan Khattak Road,
University Town, Peshawar.
Phone: 091-5701206

Ref No: HUJRA/HR/132

Date: 31-Dec-2014

TO WHOM IT MAY CONCERN

This is to certify that Ms. Bibi Hasina D/O Ayub Khan bearing CINC # 15601-0972208-2 has worked with Hujra organization part time from 01st Nov 2014 till 31st Dec 2014 as "Legal Aid Advisor" in our project "Strengthening Rule of Law" at Matta.

During her stay with Hujra organization she has proved herself to be reliable, dedicated and hardworking. She was further able to sharpen her skills. She has excellent communication skills and was kind to his colleagues as well. Her performance during the said period was "Excellent".

We wish her the very best in her future endeavors. If her work is anything to be judges by, we are certain that she will succeed in whatever she does.



HR OFFICER

Raja Gul
HR OFFICER
HUJRA

ETC
14/12/14
Petition Counsel
20/12/2014

32

Annex ¹⁰ L²²

**OFFICE OF THE DISTRICT HEALTH OFFICER
GULKADA DISTRICT SWAT**

Phone No: 0946-9240139, Fax No: 0946-9240215

Email: edohswat@yahoo.com

No. 3935 /Tour notes 2015

Dated: 18/3/2016

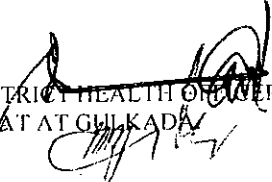
To,

Mrs. Bibi Haseena LHV 2
BHU: Baidara Swat.

Subject
Memo

WARNING

You were absent during the visit of the undersigned on 14/3/2016 at 12-05 PM, therefore one day salary is being deducted from your salary as a warning for future carefulness.


DISTRICT HEALTH OFFICER
SWAT AT GULKADA

NO _____ /

Copy forwarded to the:-

- 01- Medical officer I/C BHU: Baidara Swat.
- 02- Divisional Monitoring Officer Swat.
- 03- Account Section of this office for information to deduct one day salary from the above named official for information.
- 04- ~~BHU Swat~~

DISTRICT HEALTH OFFICER
SWAT AT GULKADA.

CTC
14/3/16
Relieved Counsel
20/3

No.	Name																																Total Late		Casual Leave		Holidays		REMARKS
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Current month	To end of Current month	Current month	To end of Current month	Current month	To end of Current month	
1	Dr. Muhammad Alyas M.Tech	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days							
2	Hussain Ali M.Tech	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days							
3	Shafiqul Khan M.Tech	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days							
4	Bibi Husina L.H.V	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days	Days							
5	Abdul Jalal Epi Tech	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training	Training							
6	Akram Khan w/o	P	P	P	P	P	P	P	P	P	P	P	P	P	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID							
7	Muhammad Hussain Beshki	P	P	P	P	P	P	P	P	P	P	P	P	P	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID							
8	Nasirul Wazir	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	N/Began	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID							
9	Gul Nozaka Dasi	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P							
10	Abdul Rahman w/Man	P	P	P	P	P	P	P	P	P	P	P	P	P	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID	NID							

on Saturday 26
He leave the
facility with out
any information
in morning.

ETC
Iphed 20/8
Petroleum
Council

