

23.10.2017


Bench incomplete. Adjourned. To come up on 24.10.2017 before D.B at camp Court D.I.Khan.

Reader

24.10.2017

Counsel for the appellant and Mr. Farkhaj Sikandar, District Attorney alongwith Mr. Khair Muhammad, MS Tank for respondents present. Learned District Attorney seeks adjournment. Adjourned. To come up for arguments on 25.10.2017 before D.B at camp Court D.I.Khan.


Member
(Executive)


Member
(Judicial)
Camp Court D.I.Khan

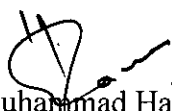
Order

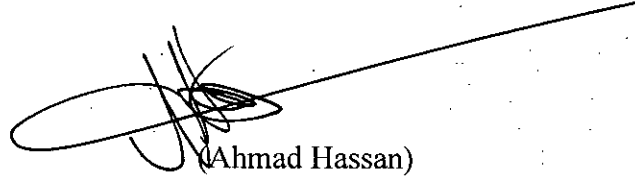
25.10.2017

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Khair Muhammad, MS Tank for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 878/2016 entitled "Shafiq-ur-Rehman-vs-Govt: of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa Peshawar and 3 others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:
25.10.2017


(Muhammad Hamid Mughal)
Member



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

Service Appeal No. 896/2016

22.08.2017

Counsel for the appellant present. Dr. Ishaq Shah, Medical Officer alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned Deputy District Attorney for the respondents requested for adjournment. Adjourned. To come up for arguments on 26.09.2017 before D.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.

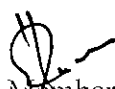

(Ahmad Hassan)
Member


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

~~26.09.2017~~

Learned Counsel for the appellant present Farhaj Sikandar, District Attorney for the respondents present. Counsel for the appellant requested for adjournment. Adjourn. To come up for arguments on 23.10.2017 before D.B at Camp Court D.I.Khan.


Member
(Executive)


Member
(Judicial)
Camp Court D.I.Khan

22.02.2017

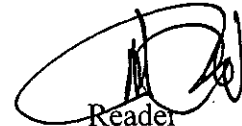
Counsel for appellant, Dr. Muhammad Khan Afridi, M.S DHQ (Tank) and Dr. Aziz Ullah, DHO (Tank) alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Written reply by respondents submitted and copies delivered to all concerned. To come up for rejoinder on 29.03.2017 before S.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.



(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

26.07.2017

Counsel for the appellant Mr. Shaikh Iftikhar-ul-Haq, Advocate present and submitted fresh Wakalatnama. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned counsel for the appellant submitted rejoinder and copy handed over to learned District Attorney for arguments. To come up for arguments on 22.08.2017 before D.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.




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

863/2016


27.12.2016

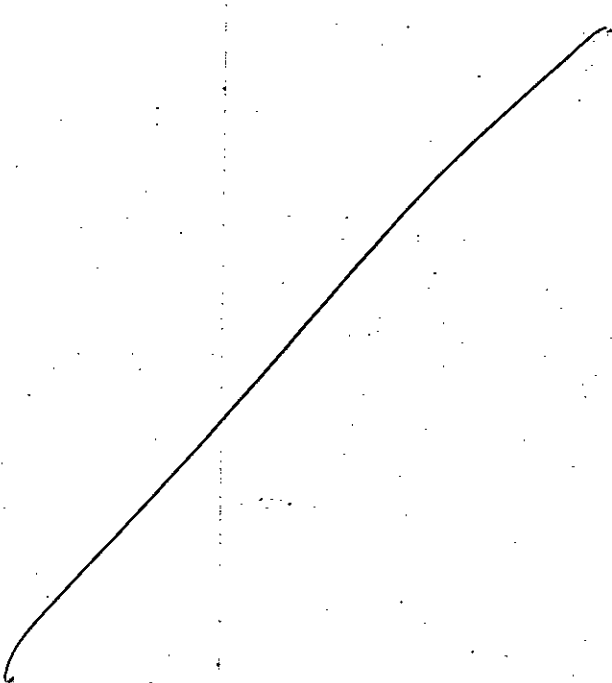
Appellant in person and Mr. Muhammad Khan Afridi, M.S (DHQ Tank) alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Mr. Muhammad Khan Afridi, M.S (DHQ Tank) requested that they had prepared the written reply/comments and he had the copies but the same were in process of signatures by the concerned authority so requested for adjournment, granted. To come up for submission of written reply/comments positively on 21.01.2017 before S.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

25.01.2017

Appellant with counsel present. Mr. Farhaj Sikandar, Government Pleader alongwith Dr. Muhammad Hussain Ahmed Afridi, M.S DHQ (Tank) and Dr. Aziz Ullah, DHO for respondents present. They have prepared the written reply but the same could not be submitted due to deficiency of number of copies, final adjournment is granted. To come up for submission of written reply/comments positively on 22.02.2017 before S.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan



Appeal No. 863/2016
Fazal Rehman vs Govt

29.09.2016

Counsel for the appellant present. Learned counsel for the appellant argued that identical service appeals including service appeal No. 860/2016 have already been admitted for regular hearing today.

In view of the above the instant appeal is also admitted for regular hearing. Subject to deposit of security and process fee notices be issued to the respondents for written reply/comments on 27.09.2016 before S.B at camp court, D.I.Khan as the same pertains to territorial limits of D.I.Khan Division. Notice of stay application shall also be issued to the respondents for the date fixed. Appointment against the subject post shall be subject to decision of the instant service appeal.

Appellant Deposited
Security & Process Fee

8/9/16 8:35 PM

Chairman

27.09.2016



Counsel for the appellant and Dr. Muhammad Khan Afridi, Medical Superintendent (Tank) alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Written reply as well as reply to application not submitted by the respondents. The learned Government Pleader and representative of the respondent-department requested for time to submit written reply. Request accepted. To come up for written reply/comments on main appeal as well as reply to stay application on 27.12.2016 before S.B at Camp Court D.I.Khan. Appointment against the subject post shall be subject to decision of the instant service appeal.

Member
Camp Court D.I.Khan

Form-A
FORM OF ORDER SHEET

Court of _____

Case No. 863/2016

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 Mr. Fazal Rehman presented today by Mr. Ghulam Nabi 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>29-08-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	<u>25-08-2016</u>	

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. 863 / of 2016

Fazal Rehman son of Ghazni Khan Appellant

VERSUS

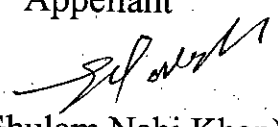
Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar and others... ... Respondents

INDEX

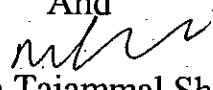
S.No	Description of documents	Annexures	Pages
1.	Service Appeal		1 - 5
2.	Affidavit		0 - 6
3.	Application for Interim Relief with Affidavit		7 - 8
4.	Copy of the Advertisement dated 24.02.2012	'A'	9
5.	Copy of Appointment letter dated 16.07.2012	'B'	10
6.	Copy of the Notification dated 11.08.2015	'C'	11
7.	Copy of the Inquiry Report	'D'	12
8.	Reply to the Inquiry Report dated 25.11.2015	'E'	13 - 17
9.	Copy of the Show Cause Notice dated 09.01.2016	'F'	18
10.	Copy Reply to the Show Cause Notice dated 23.01.2016	'G'	19 - 21
11.	Copy of the impugned letter dated 09.05.2016	'H'	22
12.	Copy of Departmental Appeal dated 23.05.2016	'I'	23 - 25
13.	Copy of the Advertisement dated 19.08.2016	'J'	26
14.	Vakalat Nama		

Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And


(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 24 08.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 863 / of 2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 890

Dated 24-8-2016

Fazal Rehman son of Ghazni Khan
Ex. Junior Clinical Technician Pathology (BPS-12)
District Headquarter Hospital, Tank...

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar.
2. Director General Health Services
Khyber Pakhtunkhwa, Peshawar.
3. Medical Superintendent
District Headquarter Hospital, Tank.
4. District Health Officer, Tank... Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED
09.05.2016 OF RESPONDENT NO.3; WHEREBY THE
APPELLANT HAS BEEN REMOVED FROM
SERVICE WITH EFFECT FROM 01.05.2016.

Prayer:

On acceptance of this Appeal the impugned order dated
09.05.2016, whereby the appellant has been removed
from service with effect from 01.05.2016 may be set aside
and the appellant may please be reinstated back to his
service with all his back benefits and emoluments.

Filed to-day

Registrar

24/8/16 Respectfully Sheweth:

1. That respondent No.4 advertised some posts on 24.02.2012 with regard
to the Medical Profession, including the post of Junior Clinical
Technician Pathology (BPS-9). (Copy of the Advertisement dated
24.02.2012 is attached herewith as annexure 'A').

- 2
2. That the appellant being qualified/eligible for the said post duly applied through the procedure and process as prescribed and finally the appellant was issued an appointment letter for the post of Junior Clinical Technician Pathology (BPS-9). (Copy of the appointment letter dated 16.07.2012 is attached herewith as annexure 'B').
 3. That the appellant has been serving the respondents department by heart and sole and in August 2015 the posts of Medical Employees were upgraded, hence all the posts of BPS-9 were upgraded to BPS-12. (Copy of the said Notification of Upgradation dated 11.08.2015 is attached herewith as annexure 'C').
 4. That the appellant was serving the respondents department with all his ability and has never given any chance of complaint to his high-ups as well as to the general community of the patients.
 5. That to the astonishment of the appellant an inquiry was held in the year 2013 with regard to the appointment of the appellant, however, the finally the recommendations of the inquiry were given in favour of the appellant. (Copy of the Inquiry Report is attached herewith as annexure 'D').
 6. That another inquiry was conducted on 25.11.2015, whereby some allegations were enquired with regard to the appointment of the appellant. (Copy of the said inquiry Report dated 25.11.2015 is attached herewith as annexure 'E').
 7. That to the astonishment of the appellant he was served with a Show Cause Notice, whereby some vague and baseless allegations were levelled against the appellant with regard to his appointment. (Copy of the Show Cause Notice dated 09.01.2016 is attached herewith as annexure 'F').
 8. That the appellant duly submitted his reply to the Show Cause Notice within the stipulated time i.e. on 23.01.2016. (Copy of the Reply to

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the Show Cause Notice dated 23.01.2016 is attached herewith as annexure 'G').

9. That to the astonishment of the appellant he was finally served with a Notification dated 09.05.2016, whereby it was revealed upon the appellant that he has been removed from service with effect from 01.05.2016. (Copy of the impugned letter dated 09.05.2016 is attached herewith as annexure 'H').
10. That being aggrieved with the above noted notification the appellant then submitted a Departmental Appeal before respondent No.2 on 21.05.2016, however, no heed whatsoever has been paid by the department to the appeal of the appellant. (Copy of the Departmental Appeal of the appellant dated 21.05.2016 is attached herewith as annexure 'I').
11. That there being no other adequate/efficacious remedy the appellant now approaches this Honourable Service Tribunal on the following grounds amongst the others:-

GROUND:

- a. That the order of removal from service of the appellant is illegal, unlawful, without authority/jurisdiction and being based on the malafide intentions of the respondent, is liable to be set aside.
- b. That the appellant has been serving the respondent department since 2012 till the date of his removal from service and has never given any chance of complaint to his high-up or to the General Community of the patients.
- c. That no complaint whatsoever has been filed throughout the service against the appellant and he has been serving his department upto his utmost skill and ability.
- d. That both the inquiries have been conducted before the issuance of the Show Cause Notice which is a great illegality on the part

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of the respondent department and which alone is sufficient for the success of the appeal of the appellant.

- e. That the appellant has been served with a single Show Cause Notice without serving upon him any other process of inquiry or any statement of allegations or any Second Show Cause Notice and he has been removed from the service in a simplicity manner without adopting the process and procedure as mentioned in the E&D Rules.
- f. That once the appellant has been appointed at the of Junior Pathology Technician and he has resumed his charge and has served on the said post for about 4 years, nobody has got any authority to challenge his appointment process or to may any objection on the appointment of the appellant.
- g. That the appellant has been honest in his approach, he has never given concealed any fact from the respondents at the time of his appointment and the inquiry conducted in the year 2013 also favours the appellant and it has been held by the apex Court that once an appointment is made and there is no misconduct on the part of the candidate the appointing authority cannot withdraw its appointment under the Shadow of his appointment being illegal or unlawful.
- h. That if there is any fault on the appointment it may be attributed to the respondents and there is no fault/misconduct under which the appellant could be punished without any fault at his part.
- i. That the appellant has missed so many chances of service advertised in the different Newspapers during the course of employment while serving in the respondent department and in the meantime when he is going to become over age he has been removed from service without mentioning any cogent and plausible reason.


- S/
- j. That the appellant has not been given any chance of defense nor he has been personally heard and his case has been decided in a summary manner.
- k. That the removal from service order of the appellant is not legal nor lawful, hence the appellant is legally eligible/entitled to be reinstated back to his service with all his back benefits/emoluments.

It is, therefore, most humbly prayed that on acceptance of this Appeal the removal from service order of the appellant dated 09.05.2016 issued by respondent No.3 may please be set aside and the appellant may very graciously be reinstated back to his service with all his service benefits/emoluments.


Any other relief deemed fit and proper under the circumstances which has not been specifically asked for may also be granted to the appellant very graciously.


Appellant

Through:


(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And


(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 08.08.2016

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the Appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.


Advocate

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:
Service Appeal No. _____ / of 2016

Fazal Rehman son of Ghazni Khan Appellant

VERSUS


Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar and others... .. Respondents

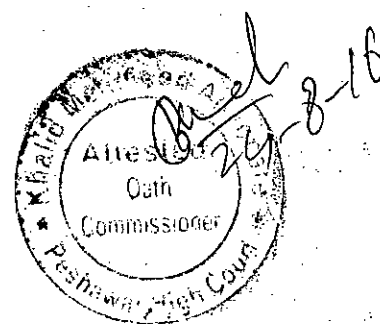
AFFIDAVIT

I, Fazal Rehman son of Ghazni Khan, Ex. Junior Clinical Technician Pathology (BPS-12) District Headquarter Hospital, Tank, do hereby solemnly affirm and declare that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Service Tribunal.


Deponent

IDENTIFIED BY:


(Ghulam Nabi Khan)
Advocate, Peshawar.



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. No. _____ / of 2016

IN RE:

Service Appeal No. _____ / of 2016

Fazal Rehman son of Ghazni Khan ... Applicant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar and others... Respondents

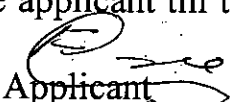

APPLICATION FOR THE GRANT OF INTERIM RELIEF.

Respectfully Sheweth:

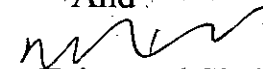
1. That the applicant has filed the accompanying Service Appeal before this Honourable Service Tribunal today in which no date of hearing has yet been fixed.
2. That the applicant has got a reasonable case with every hope of its success and will be bearing irreparable losses if the Interim Relief is not granted.
3. That the grounds of the main Service Appeal form an integral part and parcel of this application and may be read as such.
3. That after the removal of the applicant from service the respondents have advertised the post of the appellant on 19.08.2016 and they are going to fill in the post of the applicant within a short space of time. (Copy of the advertisement dated 19.08.2016 is attached herewith as annexure 'J').

It is, therefore, humbly prayed that on acceptance of this application the respondents may please be directed not to fill up post of the applicant till the final disposal of the appeal.

Through:


Applicant

(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan

And


(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 24.08.2016

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. No. _____ / of 2016

IN RE:

Service Appeal No. _____ / of 2016

Fazal Rehman son of Ghazni Khan ... Applicant

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar and others... Respondents


AFFIDAVIT

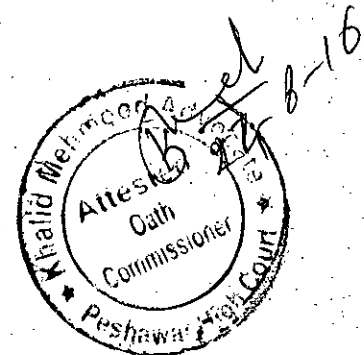
I, Fazal Rehman son of Ghazni Khan, Ex. Junior Clinical Technician Pathology (BPS-12) District Headquarter Hospital, Tank, do hereby solemnly affirm and declare that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Service Tribunal.



Deponent

IDENTIFIED BY:


(Ghulam Nabi Khan)
Advocate, Peshawar.



Amman 6 Ar (9)

کاٹنگ، مولانا محمد قاسم کھلی گھر تارگی گل شاہ زیب اور دیگر علماء و مجاہدین مسجد ترخو باغہ و اکرام پورہ ماہیگری خرنکی میں ختم القرآن پاک کے موقع پر اجتماع سے خطاب کرتے ہیں

آسان خدمات

حکومت طلحہ ٹیکہ میں ایگزیکٹو ڈسٹرکٹ آفسر ہیلتھ ٹیکہ کے ذریعہ ڈسٹرکٹ ہیڈ کوارٹر ہسپتال ٹیکہ میں صحت آہل آسامیوں پر ماریٹی بنیاد پر حیاتی کیلئے طلحہ ٹیکہ کے ان امیدواروں سے درخواستیں مطلوب ہیں جو بریکٹری کے ساتھ صحت آہل مترہ قابلیت کے معیار پر ماریتے ہیں۔

سلسلہ نمبر	تاریخ انٹرویو	مقررہ قابلیت	مقامی نام	سکیل	تعلیمی و پیشہ ورانہ تفصیلات
1				BPS-9	JCT (Anesthesia) (آنسٹھیسیا) جرنل ایف ایس ایس (سرٹیفکیشن) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس ایف ایس ایس آف لیڈ ایف ایس ایس حکومت پاکستان کے کسی متعلقہ ادارے سے لیڈ اور فیکلٹی ہونے والا میڈیکل ٹیکنیشن یا اس سے متعلقہ سہ ماہی
2	10/3/2012	ایسا	ایسا	BPS-9	JCT (Surgical) (سرٹیفکیشن) جرنل ایف ایس ایس (سرٹیفکیشن) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
3	10/3/2012	ایسا	ایسا	BPS-9	JCT (pathology) (پتھالوجی) جرنل ایف ایس ایس (پتھالوجی) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
4	10/3/2012	ایسا	ایسا	BPS-9	JCT (Radiology) (ریڈیالوجی) جرنل ایف ایس ایس (ریڈیالوجی) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
5	10/3/2012	ایسا	ایسا	BPS-9	JCT (Multipurpose) (ملٹی پورپوز) جرنل ایف ایس ایس (ملٹی پورپوز) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
6	10/3/2012	ایسا	ایسا	BPS-9	JCT (Pharmacy) (فارمیسی) جرنل ایف ایس ایس (فارمیسی) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
7	10/3/2012	ایسا	ایسا	BPS-9	JCT (Dental) (ڈینٹل) جرنل ایف ایس ایس (ڈینٹل) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
8	10/3/2012	ایسا	ایسا	BPS-9	JCT (Cardiology) (کارڈیالوجی) جرنل ایف ایس ایس (کارڈیالوجی) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
9	10/3/2012	ایسا	ایسا	BPS-9	Jr. PNC Tech: (ایم سی ایف) جرنل ایف ایس ایس (ایم سی ایف) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
10	17/3/2012	ایسا	ایسا	BPS-5	ایلیکٹریسیئن (Electrician) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
11	17/3/2012	ایسا	ایسا	BPS-4	کارپینٹر (Carpenter) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
12	17/3/2012	ایسا	ایسا	BPS-6	سٹور کیپر (Store Keeper) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
13	17/3/2012	ایسا	ایسا	BPS-5	پلمبر (Plumber) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
14	17/3/2012	ایسا	ایسا	BPS-4	ڈرائیور (Driver) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
15	17/3/2012	ایسا	ایسا	BPS-2	ڈال (Dai) ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس
16	17/3/2012	ایسا	ایسا	BPS-001	ڈائریکٹ اور سپروائزر ہیکسٹریٹو جرنل ایف ایس ایس اور متعلقہ لیڈ میں ایف ایس ایس

(1) - انٹرویو EDO میں ہوئے۔ (2) - درخواستیں سالانہ آفر پر صحت منقول اسٹاف میں سے ایف ایس ایس/ایف ایس ایس/ایف ایس ایس اور فیکلٹی اور فیکلٹی ڈپارٹمنٹ میں اور 8/3/12 تک کٹی جانے والی ہائیکسٹریٹو جرنل ایف ایس ایس۔ (3) - امیدوارانہ طور کے موقع پر اس سال ہائیکسٹریٹو جرنل ایف ایس ایس/ایف ایس ایس/ایف ایس ایس کیلئے درخواستیں جن کیلئے درخواستیں درج ذیل ہائیکسٹریٹو جرنل ایف ایس ایس کیلئے درخواستیں کی جائیں گی۔ (4) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (5) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (6) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (7) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (8) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (9) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔ (10) - درخواستوں کی مجموعی امیدواروں کے نام جاری کیے جائیں گے۔

INF(P)545 Also available on www.khyberpakhtunkhwa.gov.pk

Daily Mashruq

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OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH
DISTRICT TANK.

No. 1630-34 / 1

Dated: 18.10.12/2012.

OFFICE ORDER.

Consequent upon the approval accorded by the District Selection Committee under the Chairmanship of the Executive District Officer Health Tank and with reference to the interview held on: 20-04-2012, and 28-05-2012 Mr. Fazal Rehman S/O Ghazni Khan R/O Village Nandoor, District Tank is hereby appointed as JCT Pathology against the vacant post at DHQR: Hospital Tank in BPS-09 Viz: @ Rs. 6200-380-17600 plus usual allowances as admissible under the rules and subject to revision time to time on the following terms and conditions according to the Government Policy:-

1. His appointment in the Health Department is purely on temporary Basis and his services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that he may belong to a post other than one to which he is recruited.
2. He has to join duty at his own expenses in case he wishes to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. He will be governed by such rules and orders relating to leave, TA, Medical charges as may be issued by the Govt: from time to time for the category of Government Servant to which he may belong.
4. He will not entitle for pension or Gratuity as laid down policy of the Government of Khyber Pakhtoon Khawa Peshawar.
5. His appointment is subject to the condition that he will produce character certificate from the concerned District Police Officer as well as his Diploma Certificate shall be verified from the Khyber Pakhtunkhawa Medical Faculty Peshawar.
6. If He accepts the offer on the above conditions he is directed to report to the Medical Superintendent DHQR: Hospital Tank this office for further duty within fifteen (15) days of the receipt of this letter, failing which your services will be terminated.
7. The appointment will be subject to the production of Medical Fitness Certificate.

sd/-
EXECUTIVE DISTRICT OFFICER
(HEALTH) TANK.

Cc:-

1. Director General Health Services, Khyber Pakhtunkhawa, Peshawar.
2. District Accounts Officer, Tank.
3. Medical Superintendent DHQR: Hospital Tank.
4. Account Clerk of this office.
5. Mr. Fazal Rehman S/O Ghazni Khan R/O Village Nandoor, District Tank.

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EXECUTIVE DISTRICT OFFICER
(HEALTH) TANK.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 11-08-2015

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upgradation of posts

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NOTIFICATION

NO. SO(FR)FD/7-3/2015/Paramedics. The competent authority has been pleased to upgrade all the Paramedics Staff appointed under Khyber Pakhtunkhwa Civil Servants Act 1973, with immediate effect:

- I. All the incumbents Paramedics in BS-09 are upgraded to BS-12. In future the initial recruitment will be made in BS-12 instead of BS-09 and the Administrative Department shall immediately amend the service rules through SSRC accordingly.
- II. The incumbents presently serving in BS-12 & BS-14 are allowed 02 steps upgradation respectively with relaxation of condition of 10 years service in the same grade stipulated in the existing upgradation policy.
- III. The Paramedics presently serving in BS-16 and BS-17, having 05 years service in the respective pay scales, are allowed an allowance at the rate of fixation of pay in next grade.
- IV. The Administrative Department shall further streamline the service structure of BPS-16 and above through the mechanism of SSRC.
- V. Pay of existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.
- VI. This department notification bearing No. SO(FR)/FD/10-22/2015 dated 30-06-2015 will have no effect to the above employees.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the: -

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.

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11/11/12

**OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTERS HOSPITAL MARDAN**
Ph # 0937-9230145 Fax # 9230226

I, Dr. Abdur Rahim, Medical Superintendent, DHO Hospital, Mardan concluded enquiry against Dr. Muhammad Aslam Baloch, District Health Officer, Tank vide Director General, Health services No.269-41/C3/2085/2013 Dated 26.06.2013 (appointed as enquiry officer). After perusal of the following record and tallying it with written statement of Dr. Aslam Baloch, I have the following observations to make:

- 1- As per complaint that Dr. Muhammad Aslam Baloch, District Health Officer, Tank has made irregular purchase of Medicine/L.P during the year, 2011-2012. After perusal of record of DHO Office (Stock Register of medicines) that medicines purchased as per approved list of MCC, Peshawar and no L.P has been made during the year, 2011-2012. Hence the complaint is baseless. Annexure "A"
- 2- During the year 2011-2012 various posts of different grades of Technicians and Class-IV were created by the Finance Department, Government of Khyber Pakhtoon Khwa, Peshawar vide Notification No.BV/FP/A-46/2009-10/Vol-III dated 06/02/2012 (copy of the sanctioned attached). Annexure "B"
- 3- All these posts were properly advertised through Newspaper on 24th February, 2012 & 9th April, 2012. Annexure "C"
- 4- A selection committee was constituted by the then District Co-ordination Officer, Tank for appointment of the above created posts vide No.1902/FP (Health) of 19.04.2012 (copy attached herewith). Annexure "D"
- 5- In response to the advertisement, many applications were received, list of the applications were prepared and submitted before the selection committee on the interview date (Copy attached). Annexure "E"
- 6- Minutes of the Selection Committee has already been prepared and duly signed by the all committee members for the appointment of all Technicians/Class-IV posts (Copy attached). Annexure "F"
- 7- The appointments of all Technical posts were made on merit and no irregularity found. All Class-IV were purely appointed on merit although there is no such merit rules for induction of Class-IV employees. The appointment of Class-IV candidates only from the District Tank and no one selected from another district. No disable persons were appointed. Annexure "G"
- 8- After selection of Technical staff, the documents were sent to Secretary, Medical Faculty Peshawar for verification and some of appointee were not verified by the Faculty hence the appointment orders for those appointee, were withdrawn. Annexure "H"
- 9- The appointment orders were properly issued under proper despatch No. and issuing date from the office of the DCO (II) Tank, which is placed on file. Annexure "I"
- 10- As regards the claiming of perks and privileges during the training period of PIISA, Peshawar, his services were requisitioned by the DCO, Tank vide letter No.1678/FP (Health) dated 31.03.2012 addressed to the Secretary Health KPK to help in the process of recruitment. From my own experience (Enquiry Officer) the trainees serving on management posts retain control of their offices during the PIISA training periods Annexure "J"

In view of the above, no proof of any irregularity was found against Dr. Muhammad Aslam Baloch, District Health Officer, Tank. Being an Enquiry Officer the complaint is totally baseless and wastage of the Government time, hence the application may be filed without further action.


(Dr. Abdur Rahim)
Medical Superintendent,
DHO Hospital, Mardan

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**OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTERS HOSPITAL MARDAN
PH# 0937-9230145 FAX# 9230226**

I, Dr. Abdul Rahim, Medical superintendent, DHQ Hospital Mardan, conducted enquiry against Dr. Muhammad Aslam Executive Health Officer, Tank vide director general Health services No.260-61/CC 2085/2013 dated 26.06.2013 (appointed as enquiry officer) After perusal of the following record and Allaying in with written statement of Dr. Aslam Baloch, I have the following observation to make:-

1. As per complaint that Dr. Muhammad Aslam Baloch, District Health Officer, Tank has made irregular purchase of medicine/1 during the year 2011-2012. After perusal of record of DHQ Office (Stock Register of medicine) that medicines purchased as per approved list of MCQs Peshawar and No.1 has been made during the year 2011-2012. Hence the complaint is _____ Annexure "A".
2. During the year 2011-2012 various post of different endres of Technical and Class-IV were created by the Finance Department Government of Khyber Pakhtunkhwa, Peshawar vide Notification No. BV-1/FD/4-46/2009-10/Vol-III dated 06.02.2012 (Copy of the sanctioned attached Annexure "B").
3. All these posts were properly advertised through Newspaper on 24th February 2012 & 9th April 2012 is Annexure "C".
4. A selection committee was constituted by the then District Co-ordination Officer, Tank for appointment of the above created posts vide No.1902/FP (Health) of 19.04.2012 (Copy attached herewith) Annexure "D").
5. In response to the advertisement many applications were received. List of the applications were prepared and submitted before the selection committee on the interview date (Copy attached) Annexure "E").
6. Minutes of the Selection Committee has already been prepared and duty signed by the all committee members for the appointment of all Technical/Class-IV posts (Copy attached annexure "F").
7. The appointments of all Technical posts were made on merit and no irregularity found. All Class-IV were parely appointed on merit although there is no such merit rules for induction of Class-IV employees. The appointment of Class-IV candidates only from the District Tank and no one selected from another District no disable persons were appointed Annexure "G").
8. After selection of Technical Staff the documents were sent to secretary medical faculty Peshawar for verification and some of the appointee were not verified by the faculty hence the appointment orders for those appointee, were withdrawn Annexure "H").
9. The appointment orders were properly issued under proper dispatch No. and issuing date from the office of the EDO (II) Tank, which is placed on file Annexure "I").
10. As regards the claiming of perks and privdges during the training period at PHSA, Peshawar his services were requisitioned by the DCO Tank vide letter No. 1678/PF (Health) dated 31.03.2012 addressed to the secretary Health K.P.K to help in the process of recruitment from my own experience (Enquiry Officer) the trainees service on the management posts retain control of their offices during the PHSA training periods Annexure "J").

In view of the above no proof of any irregularity has found against Dr.Muhammad Aslam Baloch District Health Officer, Tank, being an Enquiry officer the complaint is totally base baseless and wastage of the Government time, hence the application may be filed without further action.

(Dr.Abdur Rahim)
Medical
Superintendent
DHQ Hospital
Mardan.

ENQUIRY REPORT

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Today on 25/11/2015 we the under signed moved to DHQ Tank to comply with the order of DGHS No.11705-11 dated: 16-11-2015. The committee comprised of

1. Dr.Nazir Ahmad MS DHQTH Bannu.
2. Dr.Daraz Khan DDHO Bannu.

The officers/officials were already informed vide this office letter No. 5416/- Dated: 18/11/15 sitting M.S DHQ Dr.Zafar Ali Shah and Ex MS Dr.Asiam Sherani were present along with another Ex MS Dr.Umar Shah. Dr. TAHIR JAVED. sitting DHO Came later on. The then DHO Dr.Asiam Baloch could not attend the proceedings however he remained on line with the enquiry committee.

Procedure Adopted:

The following procedure was adopted.

1. Going through record
2. Record statement
3. Checking the attendance registered
4. Visit of the Hospital.

1. Recording checking.

- | | | |
|-------|--|---------------|
| i. | Post Sanctioned in the SNE | Anexure Anx-1 |
| ii. | NOC from the office of the District Health officer Tank. | Anx-2 |
| iii. | Guideline regarding adjustment of surplus staff. | Anx-3 |
| iv. | Adjustment of Surplus Staff. | Anx-4 |
| v. | Adjustment of Surplus Staff/Explanation. | Anx-5 |
| vi. | Guide line regarding pay of Newly appointed employee/ Paramedics. | Anx-6 |
| vii. | Attendance sheet for the Selection Committee | Anx-7 |
| viii. | Office order from Executive District Officer Health Tank | Anx-8 |
| ix. | Adjustment of Staff from the Surplus Pools. | Anx-9 |
| x. | Office Order from DCO Tank. | Anx-10 |
| xi. | Advertisement in daily mashirq for the vacant posts | Anx-11 |
| xii. | DHQ Tank 6 months Indoor Patient Record | Anx-12 |
| xiii. | Guid line regarding the pay of newly appointed employees/paramedic from MS DHQ Hospital Tank | Anx-13 |

2. Recording Statement.

1. Written statement of the record keeper Anx-A

3. Checking of Attendance Register.

All The record showed that the staff is marking them present in the register.

4- Visit of Hospital:

After visit all the instructions were issued.

Findings regarding TORS:-

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TOR-1

Whether all the codal formalities viz: advertisement in press holding meeting of the Departmental Selection committee by including representative of Administration Department/DGHS Khyber Pakhtunkhwa, preparing of merit list as required under the APT Rules 1989, were competed

The codal formalities were partially competed like,

1. Advertisement in Daily Mashriq was floated.
2. The meeting of Departmental Selection Committee was deficiently followed like non inclusion of representative of DGH in Technical post selection.
3. The Final Merit list was not produced to the enquiry committee.
4. Since merit list was not available so the signatures of the members of selection committee could not be assessed.

TOR-2

Whether the vacancies were filled through Selection/recruitment of relevant categories. If not how they were allowed salaries against ex-cadre posts.

- I. Few posts were filled through selection of the relevant categories.
- II. More than half of the candidates were recruited against ex-cadre posts.
- III. Salaries were started in January, 2013 by the MS Aslam sherani along with arrears for the period from 13-05-2012 to January 2015..
- IV. DAO record showed that few of the staff had their source signed by Dr.Asalam Baloch who was not the DDO, few of them had source got signed by Dr.Umar Shah. Majority had the source signed Dr.Asalam Sherani. It was evident that the pays of staff were not drawn on the same dates but were drawn at various dates due to unknown reason.
- V. Pays started after letter of FD.No.FMIU/FD/4-1/2012/Surplus Pool dated: 27-07-2012.

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[Signature]

TOR-3

Whether the employees detailed by the DCO Tank from Surplus pool, were absorbed on Cadre posts as per surplus pool policy or otherwise.

- I. The employees detailed by DCO were not absorbed on the cadre posts. They were absorbed against posts of charge nurses, they were 6 in number.
- II. A letter was produced which was about the absorption of surplus pool staff on the posts of Charge Nurses, Astonishing, this letter was addressed from Finance Department to DHO directly bypassing the Health Secretary which is not the usual way of communication. It may need further Probing in Finance Department.

TOR-4

How many employees were recruited over and above the sanctioned strength?

- I. NOC from DCO for recruitment of all categories/Staff not taken as per record.
- II. The initials on appointment orders were denied by the available clerical staff.
- III. No letter was found which may show the requisition for DG representative for recruitment of staff on the interview date.
- IV. The DAO office showed source proformas which were signed by MS during 2012. Another MS during 2013 and by DHO for few staff members.
- V. No staff was adjusted against any post which fell vacant from 5/2012 till date as per record.
- VI. In letter no.1968-71 dated: 22-04-2013 the than DHO has replied to a letter of MS DHQ Tank that he was a competent authority to appoint any candidate on Ex-cadre post and he is responsible for that (copy attached).

The following General issues were also taken into consideration.

- 1. The huge no of sweepers were only marking themselves present but not working which was brought into the notice of sitting MS and he was advised to monitor their services according to job description.
- 2. Progress report of the hospital was taken per 6 months which was advised to be improved.

CONCLUSION:

- 1. As the final merit list of recruitment of all categories of staff was not available so the committee is not in a position to determine the transparency of the process of recruitment.

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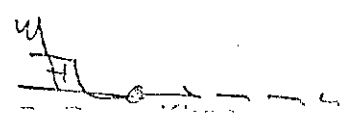
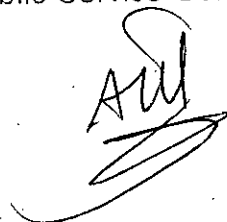
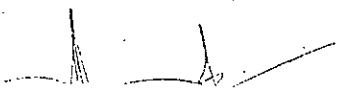
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2. The Surplus pool staff was not absorbed on the cadre posts but were placed against charge nurses posts and were drawing pay till the stoppage of pay.
3. The salaries of all the staff has been stopped whether working on cadre post or ex cadre posts which was not justified.
4. The order of finance department regarding drawl of salaries against charge nurses posts may need further clarification.
5. The court decision of Peshawar High Court DI Khan Bench is attached with Enquiry file where a relief has been given to the staff whose Services are intact may be given the relief of release of pay. The committee noticed that the staff whether on cadre or ex cadre posts have marked their attendances for the period when their pays are stopped. So they are physically present and delivering their services.

RECOMMENDATIONS:-

Since the matter is a sub judiced case with a decision of temporary relief of release of salaries of the intact staff so the committee is of the opinion that

1. The salaries of the staff who are working on the cadre posts may be released in light of the court decision on their risk.
2. The services of the staff who are absorbed on ex cadre posts their salaries cannot be released as there are no posts for their absorption.
3. The pleading officer may defend the case in the court with the plea of non availability of posts hence no salary.
4. The employees of the surplus pool who have not been absorbed on cadre posts may either be kept on waiting list or may be returned to the pool.
5. The other staff who are not on cadre posts may be kept on a waiting list and may be absorbed on any post which falls vacant in the whole District. Their positions may be kept held in abeyance.
6. The record keeping of the DHO office may be streamlined because there is a greater complexity and ambiguity in the available record.
7. The staff on cadre posts whose salaries if released, they may be directed to fill an affidavit or stamp paper to perform their duties according to their job description and to the satisfaction of the controlling officers.
8. The monitoring team of IMU may be enquired about this situation, wether they have taken any notice of this issue or otherwise.
9. The posts of Charge Nurses may not be filled up by other cadre staff as there are guazetted posts and come under domain of the DGHS because in case any recruitment is done on adhoc policy or by Public Service Commission the incumbent sent to DHQ Tank may not suffer.



Immediate/Through FAX

(17)

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.
Office Ph: 091-92102697 change # 091-9210187, 091-9210196 Fax # 091-9210230

No 12510-14/Per
Dated 14-12-15

To,

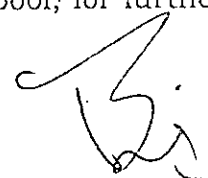
The District Health Officer
Tank.

Subject:- **ENQUIRY IN TO THE ILLEGAL RECRUITMENTS BY THE FORMER DHOS.**

The subject case was investigated through an enquiry committee, report thereof is enclosed.

A perusal of enquiry report would reveals that proper criteria as required under the APT Rules has not been fulfilled and the whole case of recruitments contains legal lacuna. More so, the employees from Surplus Pool have not been absorbed against their original cadre post as per surplus pool policy.

In view of the forgoing, you are directed to serve show cause notices upon all the illegal appointees under the E& D Rules 2011 and further action taken on receipt of their replies. At the same time all those employees who have been absorbed on Ex Cadre posts may be sent back to the surplus pool, for further disposal, under the intimation to this Directorate



DIRECTOR ADMINISTRATION
DIRECTORATE GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR

14/12/15

Cc:

1. Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar (attention litigation cell).
2. M.S DHQ Hospital Tank.
3. Assistant Director Litigation Cell DGHS, KPK Peshawar.
4. P.A to DGHS KPK Peshawar.



Findings regarding TORS:-

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OFFICE OF THE MEDICAL SUPRINTENDENT DHQ HOSPITAL TANK

No 74 /

Dated 09/01/2016

SHOW CAUSE NOTICE

With reference to Director General Health Services, Khyber Pakhtunkhwa, Peshawar letter No. 12510-14/Per dated 14/12/15 & District Health Officer Tank Endst: letter No. 79-83 dated 7/1/2016

I, Medical Superintendent DHQH Tank, as competent authority, under the Khyber Pakhtunkhwa E&D Rules, 2011, do hereby serve you, Mr. Fazal Rehman JCT Pathology DHQH Tank as follows:-


- 1) That consequent upon the completion of inquiry conducted against you by the Inquiry Committee.
- 2) That on going through the findings and recommendations of the Inquiry Committee, the material on record and other connected papers before the said committee.

The competent authority is satisfied that:-

Proper criteria as required under the APT rules has not been fulfilled and the whole case of recruitments contains legal lacuna.

As a result thereof, you are, therefore, required to show cause as to why should not your services be terminated and also you are directed to submit your reply (in writing) within fifteen days of this show cause notice, in the normal course of circumstances, in case of non compliance, it shall be presumed that you have nothing to put in and in that case an exparte action will be taken against you.

The copies of the findings of the inquiry committee are enclosed.



MEDICAL SUPRINTENDENT
DHQ HOSPITAL TANK

Dated 09/01/2016

No 75-76 /

Copy for information to the:-

- 1) Director General Health Services, Khyber Pakhtunkhwa, Peshawar w/r to his office letter No. 12510-14/Per dated 14/12/15
- 2) District Health Officer Tank w/r to his Endst: letter No. 79-83 dated 7/1/2016


MEDICAL SUPRINTENDENT
DHQ HOSPITAL TANK



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To:

The Medical Superintendent
DHQ Hospital Tank

Subject: REPLY OF SHOW CAUSE NOTICE

Respect Sir,

Incompliance with your show cause Notice bearing No. 74

Dated 09/01/2016, the answering official submits the following reply:-

1. That all the posts lying vacant were advertised in the news paper (Daily Mashriq Peshawar) dated 24/02/2012 for which the answering official alongwith other candidates applied where after selection committee for recruitments of various categories was constituted under the proper order of competent authority where after the Selection Committee on 12/07/2012 and finally after conducting test & Interviews of the suitable candidates, appointment order of the answering official was issued and where after the answering official submitted arrival / joining report after conducting Medical Test and other coddle formalities and the pay / salary was computerized.
2. That prior to the instant enquiry, another enquiry was conducted on the same facts and allegations in the year 2013 vide which the case of the answer official including the others were scrutinized where after report was submitted vide which all the appointments were declared as in accordance with law and rules. Copy of report is enclosed for kind perusal.
3. That it is unfortunate that pay/ salary of the answering official including other officials have been stopped by the then Medical Superintendent DHQ Tank against which the answering official including others have knocked the door of the Honourable Peshawar High Court DIKhan Bench by filling WP-No418-D/2015 and WP-No

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541-D/2015 which came up for hearing on 15/12/2015 and Honourable Division Bench of High Court has been pleased to dispose of the petitions on the commitment of MS DHQ Tank that the salaries of all the affectees will be released but it is very strange and funny that inspite of commitment before the Honourable High Court, salaries of the employees have not been released and further order of conducting enquiry has been issued which is not only highly objectionable but is against the provisions of fundamental rights guaranteed under constitution of Islamic Republic of Pakistan and principle of Natural Justice as by now it is a settled principles of law that even the pay /salary of suspended employees/ officials can not be stopped what to talk about the employees who are performing their duties but this principle of law and fundamental rules have been violated in the case of the answering official.

4. That no doubt enquiry under the E&D Rules is conducted against the employees / officials provided such employee is at fault but in the case of the answering official, the answering official has neither committed any fault or misconduct but enquiry has been directed to be conducted against him and the enquiry officers / enquiry committee conducted the enquiry at the back and in the absence and without participation of answering official and no charge sheet and statement of allegations have been served upon the answering official and now show cause notice has been served to which reply has been sought from the answering official.
5. That it is respectfully submitted that there is no fault of the answering official being a low paid employee/ official who apprehends snatching of lost peace of morsel as a consequence of taking of adverse action of issuance of order of termination from service by the some hidden hands of the department, then such action /orders of termination from service would amount violation of law as laid down by the apex court of the country where in it has been held that if the appointment of



employees were presumed to be in violation of the Rules and Regulations and not on merits then instead of taking action against such employees, action must be taken against the appointment authority for committing a misconduct by making illegal appointment and no action is to be taken against the appointee as such appointees/ employees have / has acquired a right of serving the department and they have at no fault.

6. That the enquiry report submitted against the answering official is illegal, against rules and fundamental rights and against principles of natural justice and is thus liable to be ignored and to be struck down.

In view of the submissions made above, it is, therefore, humbly prayed that the show cause notice may please be withdrawn with out taking any further action in matter and further salary / pay of the answering official may please be released so as to meet the ends of justice and fair play.

The answering official may please be provided an opportunity of personal hearing also.

Dated:23/01/2016

Your Obedient Servant,

Fazal Rehman - Jct Pathology

DHQ Hospital Tank

Ali

Amleat H1

OFFICE OF THE MEDICAL SUPRINTENDENT DHQ HOSPITAL TANK

No.

Dated 09/05/2016

92

OFFICE ORDER

- (1) Whereas you, Mr. Fazal Rehman JCT (Pathology) DHQ Hospital Tank were proceeded for having following gross irregularities in your appointment as proper criteria as required under the APT Rules has not been fulfilled and whole case of recruitments contains legal lacuna.
- (2) Whereas inquiry has been conducted against your appointment on the Direction of worthy Director General Health Services vide Order No. 11705-11 dated 16-11-2015.
- (3) Whereas Show-cause Notice served upon you through letter No. 74 dated 09-01-2016.
- (4) Whereas you failed to produce any documentary proof (i.e. original merit list etc)
- (5) Whereas you were given the chance of Personal Hearing on 16-02-2016 vide office order No 384 dated 29-01-2016, but the undersigned being competent authority is not satisfied from your reply.

Now therefore, the competent authority in exercise of the power conferred upon me, under Khyber Pakhtunkhwa Efficiency and Discipline rules 2011, You Mr. Fazal Rehman JCT (Pathology) DHQ Hospital Tank are hereby removed from services, w.e.f. 01-05-2016.

MAM
MEDICAL SUPRINTENDENT
DHQ HOSPITAL TANK

Dated 09/05/2016

No: 2792-96

Copy to:-

- (1) Director General Health Services, Khyber Pakhtunkhwar Peshawar, w/r to his office letter No. 3390-91/Personnel/DHO Tank dated 04-05-2016.
- (2) District Health Officer Tank
- (3) District Account Officer, Tank
- (4) Mr. Fazal Rehman JCT (Pathology) DHQ Hospital Tank
- (5) Accountant DHQH Tank to stop the pay of official concerned.

MAM
MEDICAL SUPRINTENDENT
DHQ HOSPITAL TANK

Self

To,

The Director General,
Health Services, khayber Pakhtunkhwa
Peshawar.

Amer

(23)

Subject: **DEPARTMENTAL APPEAL/REPRESENTATION AGAINST
THE ORDER DATED 09.05.2016 PASSED BY MEDICAL
SUPRITENDENT, DHQ HOSPITAL TANK VIDE WHICH THE
APPELLANT HAS BEEN REMOVED FROM SRVICES
WITH EFFECT FROM 01-05-2016.**

Respectfully stated,

1. That the health Department through E.D.O Tank advertised different posts, including the post of Jct Pathology in DHQ hospital Tank in the year 2012. Copy of advertisement is enclosed here with.
2. That the appellant also applied for the post of Jct Pathology and after completing all code formalities, the appellant was appointed as Jct Pathology vide appointment order Dated: 16/07/2012 copy of appointment order is enclosed herewith.
3. That the appellant, after getting himself medical examined, submit that arrival report to the concerned authorities and started performing his duty. relevant documents are enclosed herewith.
4. That in the year 2013 an inquiry was conducted regarding the different appointments, which ended in favour of appellant copy of the same is enclosed herewith.
5. That the appellant then received an show cause notice dated 19-01-2016, wherein reference was made of any inquiry, which was kept secret from the appellant. Copy of show cause notice is enclosed herewith.
6. That the appellant then submitted reply to the show cause, wherein he specifically shown his astonishment regarding inquiry, allegedly conducted in the year 2015, because he was never associated with same. copy of reply to the show cause notice is enclosed herewith.
7. that the appellant was then called for personal hearing and the produced all the relevant documents, supposed to be available with the appellant and then he was asked to wait for the order in the near future.

Adil

8. That the appellant received the office order dated 09.05.2016 on 10.05.2016 in the office and he was asked that he has been removed from services with effect from 01.05.2016. Copy of order dated 09.05.2016 is enclosed herewith.
9. That the order dated 09.05.2016 is totally illegal, based on surmises and conjectures, levelling no allegations against the appellant and the fault of unknown person has been mentioned but the punishment was given to the appellant.
10. That under the circumstances and prevailing law, if any fault is found on the part of appointing authority, then the august Supreme Court on this particular aspect has delivered so many judgments that the appointing authority should be penalized instead of the appointee, whereas, in the present case the appellant has been victimised for the alleged fault of another person.
11. That is strange to note that in Para-4 of the order dated 09.05.2016, the Medical Superintendent has mentioned "whereas you failed to produce any documentary proof (i.e. original merit list etc.)", whether the appellant was supposed to keep the merit list etc. in his possession or it was the duty of the office to keep the record and whether the appellant can be penalized for non-maintenance of the record by the record keeper? This important aspect has been ignored by the Medical Superintendent, whereas, in the earlier inquiry, held in 2013 all the record was available in the office, which was scrutinized by the inquiry officer and that is why the said inquiry was decided in favour of the appellant and other appointees.
12. That another aspect which was ignored by the Medical Superintendent while passing office order dated 09.05.2016 that he has mentioned that under Khyber Pakhtunkhwa Efficiency and Discipline Rules, 2011, I have been removed from service, whether the non-production of merit list by the office does come within the preview of the rules for removing the appellant from service?
13. That appellant has been condemned for the alleged wrong never committed by him, rather it was not within the duties of the appellant to keep such record, which was the duty of the office and instead the appellant has been removed

Aet

25

from service, whereas, if any, action was required to be taken then it was the office and not the appellant.

- 14. That is pertinent to mention here that the appellant was never issued any charge sheet because no charge was ever levelled against the appellant, therefore, the basic requirements of Efficiency and Discipline Rules, 2011 have been violated by the competent authority, therefore, the removal from service order dated 09.05.2016 automatically becomes ineffective on the rights of the appellant.
- 15. That as mentioned above, the inquiry conducted in the year 2013, reached to the conclusion that all the appointments were made strictly in accordance with rules and that is why the inquiry was filed in favour of the appellant and other appointees but the alleged inquiry conducted in the year 2015, the appellant was never informed or he was never associated for the purpose of inquiry, otherwise the situation would have been different, from what is now.
- 16. That the non-issuance of charge sheet clearly indicates that there were no charges against the appellant, which should have been replied by the appellant.
- 17. That the non-issuance of charge sheet, which is mandatory under Efficiency and Discipline Rules, 2011, the entire proceedings became illegal and in result thereof the removal from service order of the appellant dated 09.05.2016 is also illegal.
- 18. That the appellant wishes to be heard in person.

In view of the above made submissions, it is very humbly requested that on gracious acceptance of the instant departmental appeal / representation, the order dated 09.05.2016 passed by M.S, DHQ Hospital, Tank may very kindly be set aside and the appellant may be reinstated in service with all back benefits.

Your humble appellant,

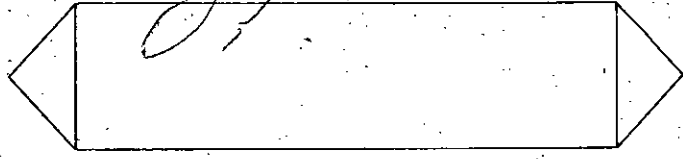
Fuzul-Rasool

Dated: 23.05.2016

Reg no 642
23/5/16

AS
S

بعدالت سررس مندرجہ



مورخہ 24 اگست 2016ء منجانب
مقدمہ
دعویٰ
جرم
صنعتی
بنام عدالت

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کیلئے محمد موسیٰ محمد اسحاق
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز
وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 24 ماہ اگست 2016ء

العبد گواہ العبد کے لئے منظور ہے۔
مقام

Appeal No. 863/2016

MR. FAZAL REHMAN

(Appellant)

Versus:-

Government of Khyber Pakhtunkhwa through Secretary, Health and others

(Respondents)

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT NO.1, 3,4 & 6

PRELIMINARY OBJECTIONS.

- That the appeal is not maintainable and incompetent in the eyes of Law in the present form.
- That the appellant is estopped due to his own conduct to file this appeal.
- That the appellant has got no cause of action and locus standi to file instant appeal.
- That the appellant has not come to the Tribunal with clean hands and has suppressed all relevant facts.
- That the appeal is bad for misjoinder/non-joinder of necessary parties.
- That the appeal is badly time barred and the appellant has concealed the material facts from Honourable Tribunal.
- That the Honourable Service Tribunal has no jurisdiction to entertain the instant appeal in its present form.
- That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present form and context, and is liable for Rejection.
- That the appeal is weak having no force, fabricated, fictitious, based on ill will, mollified and having no footings in the eyes of law.
- That proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this Honourable Tribunal.

RESPECTFULLY SHEWETH

1. The Para No. 1 is correct.
2. Eligibility of the applicant need verification from the Concerned Medical Faculty.
3. Para No. 3 is correct to the extent that Govt. upgraded all the paramedics from BPS-09 to BPS-12.
4. It is incorrect, the applicant involved in strikes against the administration etc.
5. Incorrect, the applicant cannot claim the benefit of that inquiry, as it was not specific for appointments, it was regarding other nature of complaint against the then DHO.
6. It is correct.
7. Incorrect, show cause was issued legally as there was two newly sanctioned posts of JCT (Pathology) however three personne'ls were recruited, over and above the sanctioned strength.
8. Correct to the extent that the applicant submitted his reply, which was not satisfactory.
9. The applicant was leggally terminated from service, as he was appointed above the sanctioned strength.
10. correct to the extent that the applicant submitted Departmental appeal to the respondant-No. 2 but it was rejected by the competent authority.
11. Para No. 11 is relates to the jurisdiction to the Hon'ble Service Tribunal KPK, which is legally correct. However detail reply on the grounds are as under:-

REPLY ON GROUNDS

- a. Para (a) is incorrect and appellant was legally terminated from his service, and he was illegally appointed by the then DHO (Dr. Aslam Baloch) now retired.
- b. It is incorrect, appellant was illegally posted at the post of JCT (Pathology) above the sanctioned strength.
- c. Incorrect, the applicant was involved in the strikes etc and Health is declared as essential service.
- d. Incorrect, the first inquiry was a general inquiry not specific for appointments. The 2nd inquiry was conducted specifically for appointments and upon the 2nd inquiry, show cause notice was issued to the applicant.
- e. Incorrect, all the codal formalities were fulfilled before termination of the applicant.
- f. It is incorrect as the appellant was illegally appcointed above the sanctioned strength.
- g. Incorrect, the applicant was appointed illegally.
- h. It is incorrect and not admitted.
- i. Incorrect, not admitted.

It is incorrect, all the codal formalities were fulfilled, he has been given the chance of personal hearing. (Annex-1) is attached as a proof.

It is incorrect and appellant was legally terminated.

PRAYER:

It is therefore, most humbly prayed that on acceptance of this para-wise comments, the appeal of the appellant may kindly be dismissed with cost.

MEDICAL SUPRINTENDENT

DHQ HOSPITAL TANK

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL TANK

No 1705

Dated 30/2/2014

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar

Subject: EXCESS DRAWAL OF POSTS BEYOND SANCTION STRENGTH

R/Sir,

It is submitted for your kind information that District Accounts officer Tank issued the subject captioned above letter address to MS DHQ Hospital Tank and copy of which is forwarded to your good honour vide his office letter No. DAO/TK/Admn/2685-86 dated 24/09/2014. (Copy attached for ready reference).

In this regard it is stated that total 32 employees are working over and above the strength, out of which 5 numbers employees of surplus pool were adjusted without availability of sanctioned posts, while remaining 27 appointments were made by the Ex-EDO (Health), beyond the sanctioned posts.

It is therefore, requested to initiate a fact finding enquiry, so as to proceed further into the matter.


MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

No 1706-09

Dated 30/2/2014

Copy to the:-

- I. PS to Secretary Health for information and correct solvency of matter to avoid the future complications.
- II. Commissioner D.I.Khan Division D.I.K an for information please.
- III. Deputy Commissioner Tank for information please.
- IV. District Health Officer Tank


MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.**

Service Appeal No. 863 /2016

Fazal Rehman **VERSUS** Govt; of K.P.K etc

**REJOINDER ON BEHALF OF APPELLANT
AGAINST THE COMMENTS / REPLY OF
THE RESPONDENTS NO. 1, 3, 4 TO 6.**

Respectfully Sheweth:-

Appellant submits rejoinder as under:-

On Preliminary Objections:-

A. That the answering respondents have not explained that how the appeal is not maintainable and how is incompetent. Moreover the appellant being aggrieved from the illegal order of removal from services. Hence, para is misconceived and denied.

B. That the answering respondents have not explained that how the appellant has been stopped by his own conduct. Hence, this para is mis-formulated over.

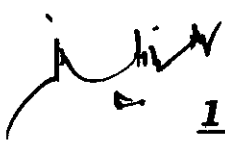
C. That the appellant is being civil servant and aggrieved from the removal order. Hence having cause of action and locus standi para is denied.

D. This para is incorrect. Hence denied.

- E. The answering respondents have not give any other, which have omitted or added. Hence their para is denied.
- F. The appeal is well within time. Hence this Para is denied.
- G. The answering respondents have not explained that how this Honourable Tribunal has not got jurisdiction. Hence, this para is denied.
- H. That this Para is misconceived and denied. Actually the removal order of appellant is mis-oriented, mis-constructed and mistakenly drawn by the answering respondents which is liable to set aside.
- I. That Para No. 9 is denied. Actually the impugned order is weak having no force, fabricated, factitious, based on ill will, malafide and having no footings in the eyes of law.
- J. Para No. 10 is misconceived and denied. Actually no proceeding whatsoever has been done by the respondents authority while passing the impugned illegal order and thus through futile exercise of action the appellant has been harassed and made scapegoat without any justification and reasons.

ON FACTS:

1. Para No. 1 needs no reply as declared correct.
2. That the respondent authority already verified the eligibility of the appellant from the concerned medical faculty, where in the appellant has been declared eligible, successful and fit during initial stages of appointment.
3. Para No. 3 needs no reply.
4. Para No. 4 is denied. Moreover, the appellant never involved in strike. Hence this para mis-formulated.

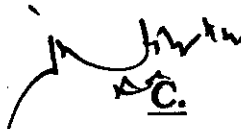
5. Para No. 5 of the reply of the answering respondent is incorrect. The appellant cannot be made scapegoat through double jeopardy by inquiry again and again through same subject matter. As in the light of judgments of superior Court and prevailing service laws and Esta Code one cannot be involved in a dual inquiry / trial as envisaged in fair trial and warranted in 10(A) of Constitution of Islamic Republic of Pakistan, 1973. Hence, this para is mis-formulated.
6. Para No. 6 needs no reply.
7. Para No. 7 of the answering respondent is incorrect and denied. The appellant has been appointed against the vacant sanctioned post and performed their duties with full satisfaction of superiors since from 16/07/2012. Hence this para is misconceived.
8. Para No. 8 of the answering respondent needs no reply. Actually the show cause notice on behalf of respondents authority was baseless and manipulated. Thus the question of non-satisfaction not arises. Hence this Para is denied in above terms.
9. Para No. 9 is denied. The appellant was illegally terminated without adopting the procedure and service rules.
10. That the respondent authority has not shown the rejection order of Departmental appeal. Hence this Para is denied in above terms.
-  11. Needs no reply.

ON GROUNDS:-

- A. Para No. 1 is misconceived. The appellant has been appointed after all codal formalities. Moreover, as per verdict of superior Courts the

beneficiary of illegal appointment (not admitted in the instant case because the appointment order of the appellant is accordance to law and as per service rules after adopting all codal formalities) cannot be blamed alone because primarily the authority who had actually wrongfully exercised its powers for the reasons known to it, was bound to be held responsible for the same. Instead of penalizing such employees like Junior Clerk etc. who had to earn livelihood to support their families and if after having served for a long period they were removed from service discriminately, such action would give rise to a number of problems.

B. Para No. 2 is misconceived. Moreover, as per verdict of superior Courts the beneficiary of illegal appointment (not admitted in the instant case because the appointment order of the appellant is accordance to law and as per service rules after adopting all codal formalities) cannot be blamed alone because primarily the authority who had actually wrongfully exercised its powers for the reasons known to it, was bound to be held responsible for the same. Instead of penalizing such employees like Junior Clerk etc. who had to earn livelihood to support their families and if after having served for a long period they were removed from service discriminately, such action would give rise to a number of problems.

 C. The appellant has never involved in any illegal activities and strikes etc. Thus this Para is squarely denied.

D. The para of the answering respondents is denied. However, appellant retrieve his para of appeal.

E. The Para E of the answering respondents is wrong and denied. No codal formalities have been done fulfilled by the respondent authorities before issuing the illegal

termination order. However appellant retrieve his para of appeal.

F. Para No. F of the answering respondent is denied. The appellant has been legally appointed after all codal formalities against the vacant sanctioned post as the appellant being eligible, fit and successful for the said post. Hence this Para is mis-formulated.

G. The Para G of the answering respondents is squarely denied. Moreover the answering respondents has not explained that what illegality has been done by on behalf of the appellant.

H. Para No. H is denied. However appellant retrieve his para of appeal.

I. Para No. I is wrong.

J. Para No. J is wrong not admitted. No codal formalities has been initiated while passing the impugned order. Moreover the appellant has been discriminated as their colleagues namely Zohaib Shah S/o Pir Liaqat Ali Shah (Appointed as Radiology Technician BPS-9 vide Office order 159-94 dated 16/07/2012) and Siraj Khan S/o Wali Mohammad Junior Clinical Technician (JCT) Pharmacy BPS-12 is presently serving in the Health Department. This sole ground is sufficient for reinstatement of appellant.

K. Para No. K is incorrect. The appellant retrieve his of appeal.


It is therefore, humbly prayed that the Appeal may kindly be accepted as prayed for.

Your Humble Appellant



Fazal Rehman
(JCT, Pathology
GHQ, Hospital Tank)
S/o Ghazni Khan

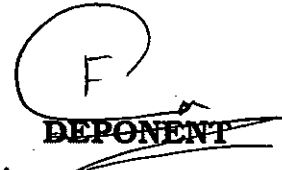
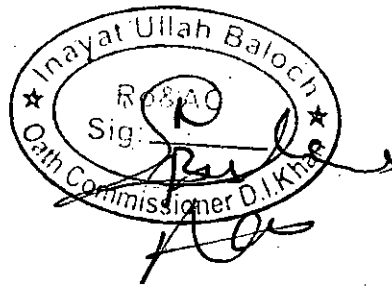
Dated: 26/07/2017



Sheikh Iftikhar Ul Haq
Advocate High Court
Dera Ismail Khan

AFFIDAVIT

I, **Fazal Rehman, the appellant**, do hereby solemnly affirm declared on oath that contents of the above **rejoinder** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal Court.



DEPONENT