

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

Service Appeal No.585/2019

Date of Institution ... 06.05.2019

Date of Decision ... 22.02.2021

Muzamil Hussain S/O Muhammad Jehangir R/O Jabbar Wala, Dera
Ismail Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health
Department and three others.

... (Respondents)

Muhammad Waqar Alam,
Advocate

... For appellant.

Noor Zaman Khan Khattak,
District Attorney

... For respondents.


ROZINA REHMAN

... MEMBER (J)

ATIQU-UR-REHMAN WAZIR

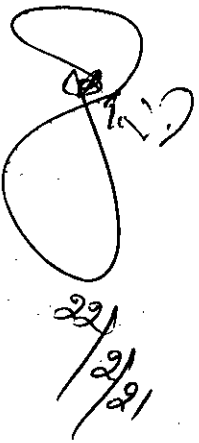
... MEMBER (E)

JUDGMENT


22/2/21
ROZINA REHMAN, MEMBER :Appellant was appointed as Junior P.H.C
Technician after observance of all codal formalities. Vide impugned order
dated 11.04.2018 he was not reinstated into service. It is the legality and
validity of this order which has been challenged by him in the present
service appeal filed U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act,
1974.

2. Brief facts of the case are that the appellant was appointed as Junior Primary Health Care (P.H.C) Technician, Multipurpose (M.P) Insects Collector (BPS-09) vide order dated 25.04.2013. He continued his services till 2015 and it was on 15.04.2015 when his termination order was issued. He, therefore, preferred departmental appeal which was not responded to, hence, he filed service appeal and vide order dated 19.02.2018 of this Tribunal, he was reinstated into service with direction to the respondents to examine his case as to whether he is eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant. An application was also submitted to the respondents for implementation of the orders of this Tribunal but to no avail, hence, he filed implementation petition and it was during the pendency of the implementation petition, when the impugned order in respect of his termination was brought into his knowledge. He then withdrew his execution petition and preferred a departmental appeal which was not decided, hence, the instant service appeal.

3. Learned counsel for appellant argued that after fulfillment of codal formalities, appellant was appointed as Junior P.H.C Technician vide order dated 25.04.2013. He argued that the impugned refusal order dated 11.04.2018 is illegal, against the law and facts as he was properly appointed after observance of all codal formalities. He submitted that his salary form was properly checked and verified by the District Accounts Officer Tank where-after Personnel Computer Salary Number was allotted. He submitted that case of the appellant was remitted to the department by this Tribunal with direction to ascertain whether the appellant is eligible to hold the post or not and then to dispose of his case after providing

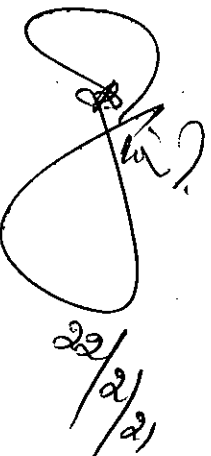


22/2/21

opportunity of hearing to the appellant but the respondents deprived the appellant from his valuable rights. He argued that no opportunity of personal hearing was provided to him and he was condemned unheard.

4. Conversely, learned District Attorney argued that appellant remained absent from his duties after his appointment and being the resident of District D.I.Khan, he was least interested in the service at District Tank. He submitted that appellant was terminated after observance of codal formalities and the order was issued in accordance with law and rules as the appellant was not only underage but also was having no diploma from a recognized institute as per requirement.

5. Perusal of record would reveal that appellant was appointed by the competent authority as is evident from the appointment order dated 25.04.2013. He assumed the charge and started to perform duties. His earlier Service Appeal No.957/2015 was accepted and the respondents were directed to examine the case of the appellant to ascertain whether he is eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant. The advertisement available on file clearly shows that applications were invited for different posts including the post of Junior Clinical Technician JCT (BPS-09) wherein the age limit was mentioned as 18 to 30 years and the requisite qualification for the post was S.S.C with Science from recognized board and certificate from N.W.F.P Medical Faculty/recognized institution in relevant field/Health Technology. No doubt, he produced relevant documents which are available on file. As per record, the date of birth of appellant as per his medical certificate was entered and recorded as 23rd May, 1996 whereas he submitted his arrival report on 01.05.2014 which clearly shows that he was underage. Secondly,



Handwritten signature and date: 22/2/21

applications were invited for the said post from local of District Tank whereas the present appellant hails from District D.I.Khan. Yet another interesting point in the instant case is in respect of his requisite qualification in the relevant field. He just placed on file a certificate in respect of Malaria Supervisor Training Completion and that too for a period of three months. This certificate shows that the present appellant had undergone voluntarily training of Malaria Supervisor whereas as per advertisement as well as service structure of the Paramedics, Certificate from Medical Faculty/recognized institution in relevant field/Health Technology was required which was not fulfilled by the appellant. The directions of this Tribunal to the respondents' Department were to examine the case of the appellant as to whether he is eligible to hold the post and accordingly after scrutiny of his relevant documents and after affording him an opportunity of hearing, it was held by the competent authority that the present appellant was ineligible candidate for the post of Junior PHC Technician as per approved service structure of Government of Khyber Pakhtunkhwa Health Department for Paramedics, therefore, he was not reinstated into service. Another important limb of arguments was in respect of limitation. Admittedly, the impugned order was passed on 11.04.2018 whereas the departmental appeal was filed on 23.01.2019 which is badly time barred, therefore, the appeal before the Tribunal is incompetent.


6. As per Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may, within 30 days from the date of communication of the order to him, prefer an appeal to the appellate authority. It is well-entrenched legal proposition that


22/12/21

where appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426.

7. In view of the foregoing reasons, the instant appeal is dismissed; with no order as to costs. File be consigned to the record room.

ANNOUNCED.
22.02.2021


(Attiq ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan


22.02.2021

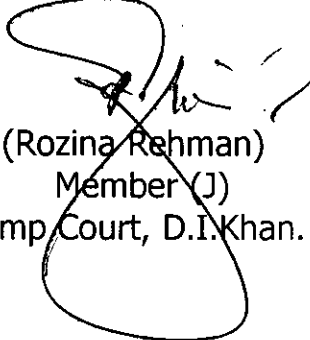
Appellant present through counsel present.

Noor Zaman Khan Khattak learned District Attorney for respondent present.

Arguments heard. Vide detailed judgment of today of this Tribunal placed on file, the instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Announced.
22.02.2021


(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan.


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan.

28.10.2020


Muhammad Jehangir, father of the appellant, on behalf of appellant is present. According to him appellant is indisposed of today. Mr. Usman Ghani, District Attorney is also present.

A notice to respondent No. 4 has been issued but he is neither present in person nor anyone representing him has appeared before the Tribunal. Accordingly, he is placed ex-parte. Written reply on behalf of respondents No. 1 to 3 has already been submitted. File to come up for rejoinder and arguments on 22.12.2020 before D.B at Camp Court, D.I.Khan.

(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT D.I.KHAN

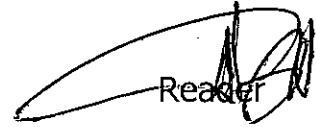
22.12.2020

Due to Pandemic of Covid-19, the case is adjourned to 22.02.2021 for the same.


Reader

25/3/2020

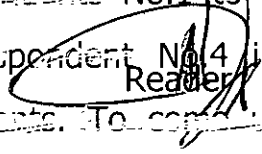
Due to COVID-19 the case is adjourned. To come up for the same 23/4/2020 at Camp Court, D.I Khan


Reader

~~27/09/2020~~
23/4/2020

~~Junior counsel on behalf of appellant present.~~
Due to COVID-19 the case is adjourned. To come up for the same 23/4/2020 at Camp Court, D.I Khan
~~Mr. Usman Ghani learned District Attorney for respondents present.~~

~~Written reply on behalf of respondents No.1 to 3 has already been submitted. Reply of respondent No.4 is still awaited. Notice be issued to respondents. To come up for written reply/comments of respondent No.4 on 28.10.2020 before S.B of Camp Court D.I Khan.~~


Reader

~~(Rozina Rehman),
Member (J)
Camp Court, D.I Khan~~

23.09.2020

Junior counsel on behalf of appellant present.

Mr. Usman Ghani learned District Attorney for respondents present.


Written reply on behalf of respondents No.1 to 3 has already been submitted. Reply of respondent No.4 is still awaited. Notice be issued to respondents. To come up for written reply/comments of respondent No.4 on 28.10.2020 before S.B at Camp Court D.I Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

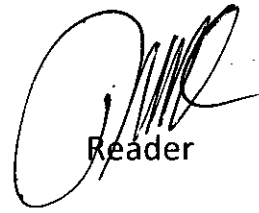
24.02.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Sajjad Qureshi, C.T Pharmacy on behalf of respondents No. 1 to 3 present. Representative of respondents No. 1 to 3 submitted written reply on behalf of respondents No. 1 to 3. The same is placed on record. Neither written reply on behalf of respondent No. 4 submitted nor representative on his behalf present, therefore, notice be issued to him with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on behalf of respondent No. 4 on 25.03.2020 before S.B at Camp Court D.I.Khan.


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

21/10/2019


Since tour to D.I.Khan has been cancelled .To come for the same on 25/11/2019.



Reader

25.11.2019


Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sajjad Qurashi, C.T Pharmacy for the respondents present. Written reply on behalf of respondents not submitted. Representative of respondents seeks adjournment. Case to come up for written reply/comments on 27.01.2020 before S.B at Camp Court D.I.Khan.



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

27.01.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Sajjad Qurashi, C.T Pharmacy for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 24.02.2020 for written reply/comments before S.B at Camp Court D.I.Khan.



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

28.08.2019

Counsel for the appellant Muzamil Hussain present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Junior PHC Technician vide order dated 25.04.2013 by the department. He was terminated from service vide order dated 15.04.2015. It was further contended that after filing departmental appeal, the appellant filed Service Appeal which was accepted, the impugned order was set-aside, the appellant was reinstated in service with the direction to the respondents to examine his case to ascertain whether he is eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant vide detailed judgment dated 19.02.2018. It was further contended that the appellant filed Execution Petition for implementation of the aforesaid judgment of Service Tribunal. It was further contended that during the pendency of the Execution Petition, the respondent-department produced termination order dated 11.04.2018 before Service Tribunal order sheet dated 21.01.2019. It was further contended that the appellant came to know about the said order on the same date i.e 21.01.2019 and filed departmental appeal on 23.01.2019 which was not responded hence, the present service appeal. It was further contended that the appellant was appointed after fulfilling all the codal formalities and the appellant is fully eligible to hold all the requisite qualification for the said post but the respondent-department has again illegally terminated the appellant vide order dated 11.04.2019 therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 21.10.2019 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security & Process Fee

30/8/19



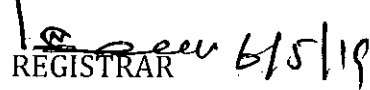

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 585/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 06/05/2019 | <p>The appeal of Mr. Muzamil Hussain received today by post through Muhammad Waqar Alam Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR </p> |
| 2- | 8.8.2019 | <p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>28.8.2019</u></p> <p style="text-align: right;">  CHAIRMAN </p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. 585 /2019

Muzamil Hussain

VERSUS

GOVT of KPK etc

I N D E X

| S.No. | Description of documents | Annexures | Pages |
|-------|---|---------------------|--------|
| 1 | Appeal alongwith affidavit | | 1-20 |
| 2 | Copies of appointment order of appellant dated 25/04/2013 along with advertisement | A | 11-12 |
| 3 | Copies of arrival report and medical certificate of appellant | B & B/1 | 13-14 |
| 4 | Copy of posting order No. 1051/ of Appellant dated 30/04/2014 | C | 15 |
| 5 | Copy of previous Impugned Termination order dated 15/04/2015 along with departmental appeal dated 08/05/2015 | D & E | 16-17 |
| | Copies of service appeal and judgment dated 19/02/2018 of KPK Service Tribunal | F | 18-22 |
| 6 | Copies of applications along with postal receipt | G | 23-230 |
| 7 | Copies of implementation petition along with withdrawal application, impugned order dated 11/04/2018 and order sheet dated 21/01/2019 | H & I | 24-29 |
| 8 | Copy of departmental appeal along with postal receipt | J | 30-31 |
| 9 | Copies of Malaria course completion certificate and pay slip of the appellant | K | 32-34 |
| 10 | Copy of written reply earlier submitted by respondents | -- | 35-40 |
| 14 | Vakalatnama | Muhammad waqar Alam | 41 |

Dated: 30.04.2019

Appellant's counsel

Muzamil Hussain
30/4/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. 585 /2019

Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar
Wala, Dera Ismail Khan.

(PETITIONER)
Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 707
06-5-2019
Dated 06-5-2019
Health

1. Government of KPK, through secretary Department, KPK Peshawar.
2. Director General Health services, KPK Peshawar.
3. District Health officer (DHO), District Tank.
- ④ District Accounts Officer, District Tank

..... **(RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. 1338/Court DATED 11/04/2018 ISSUED BY RESPONDENT NO.3/DHO, TANK, WHEREBY THE JUDGMENT OF THE LEARNED SERVICE TRIBUNAL WAS NOT IMPLEMENTED WITH BASELESS OBJECTION, "OFFICE IS UNABLE TO REINSTATE THE CONCERNED PETITIONER" AND AGAINST THE OMISSION ON THE PART OF RESPONDENT NO.2 FOR INDICISION OF THE DEPARTMENTAL APPEAL WHICH IS AGAINST THE LAW AND IN VIOLATION OF SERVICES LAWS AND RULES AND THE APPELLANT WAS CONDEMNED UNHEARD WITH MALAFIDES.

Exported to
28/02/20
Filed to-day
Registrar
6/5/19

Jlu.
30.4.19

PRAYER

On acceptance of the instant service appeal, the impugned order No. 1338/Court DATED 11/04/2018 issued by respondent#3 may please be reversed and set-aside and respondents may kindly be directed to reinstate the appellant in service with all back benefits.

Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

1. That the present appellant was appointed as Jr.PHC Technician (MP) Insect collector (BS.9) vide appointment order No. 1013-15 dated 25.04.2013 in health Department. The appellant submitted his arrival report and medical certificates and joined his services. Copy of appointment order of Appellant is annexed as "**Annexure A**". Copy of arrival report is also annexed as "**Annexure B**" and copy of medical certificate is annexed as "**Annexure B/1**".
2. That thereafter, appellant was posted at BHU Cheena vide office order No. 1051 dated 30.04.2014, copy whereof is enclosed as **Annexure C**".
3. That services of the appellant continued till 2015 without any stain and stigma and he performed his duties to his best but Respondent No. 3/ DHO firstly stopped salary and subsequently issued termination Order No. 1220/ dated 15.04.2015 with certain reasons mentioned therein. Copy of impugned termination order is enclosed as **Annexure D**".
4. That Feeling aggrieved from the termination order, the appellant preferred departmental appeal to respondent No.2/Director General Health services being appellate

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authority on 08.05.2015. Copy of departmental appeal is annexed as **Annexure "E"**.

5. That feeling aggrieved with the indecision of the departmental appeal of the appellant, the appellant approached this Honourable Tribunal vide service appeal#957/2015 which was very graciously was allowed vide order dated 19/02/2018 this worthy Tribunal. Copies of the service appeal along with judgment dated 19/02/2018 are jointly annexed as **Annexure-F**.
6. That the appellant after getting attested copies of the order dated 19/02/2018, frequently moved applications for implementation of order of worthy service tribunal but the respondents were remained reluctant to implement the same. Copies of applications along with postal receipt are jointly annexed herewith as **Annexure-G**.
7. That the appellant filed implementation petition before the worthy service tribunal for implementation of judgment dated 19/02/2018 which is withdrawn on 21/01/2019 due to provision of impugned office order dated 11/04/2018 by the respondent#3 in the court. Copies of implementation petition along with ~~implementation application~~, impugned order dated 11/04/2018 and order sheet dated 21/01/2019 are jointly annexed as **Annexure-H & I**.
8. That after getting the impugned order dated 11/04/2018, the appellant preferred a departmental appeal to the respondent#2 which is still not decided by the appellate authority. Copy of departmental appeal along with postal receipt is annexed as **Annexure-J**.
9. That up-till now no response has been shown from the respondents and after the laps of statutory limitation of departmental appeal, cause of action has been accrued to the appellant for the instant appeal, Hence the instant service appeal.

10. That jurisdiction of this worthy service tribunal is being invoked in attending circumstances against the impugned order No. 1338/Court DATED 11/04/2018, inter alia on the following grounds amongst others;

GROUNDS

- a. That the impugned refusal order No. 1338/Court DATED 11/04/2018 and indecision of appellant's departmental appeal is illegal, against services Law and rules, without jurisdiction, in violation of the precedents of Honourable epic courts of the country and is not justifiable for any reason whatsoever.
- b. That appellant was appointed against vacant post JCT Multipurpose (Insect Collector) in 2013 and after submission of all formalities, District Accounts officer Tank checked salary form, verified the same for activation of salary and personal computer salary Number 00717508 was also allotted. Since then, Appellant has been serving health department and invested his full skill, energy and honesty in performance of his duties but the act of respondents is injustice to with appellant and termination order is against Law.
- c. That when this Honourable Tribunal accepted the service appeal of the appellant vide judgment dated 19/02/2018 by giving certain directions to the respondents regarding reinstatement into service of appellant with the direction to the respondent to examine his case to ascertain whether he is eligible to hold the post or not and shall disposed of the same after providing opportunity of hearing to the appellant but unfortunately the respondents depriving the appellant from his valuable right which is accrued and matured by dint of his service and merit, hence, the act of respondents is liable to be set aside by this honourable
- Ylu*

tribunal due to violation made by issuance of the impugned order No. 1338/Court DATED 11/04/2018.

- d. That reasons mentioned in impugned order is baseless and the impugned order was issued without adopting any codel formalities and without any show cause notice to appellant. Hence, the appellant was condemned unheard.
- e. That in this regard at a number of occasions, it has been held by Supreme Court that if department feels certain prior appointments as illegal then instead of penalizing petty employees like Chowkidar, Naib Qasid, Junior Clerks etc, who have to earn livelihood to support their families, action should be taken against the authority who had mis-exercised its powers. Reliance is placed on 2012 SCJ 780 for ready reference.
- f. That the appellant is competent and eligible for the post of Junior Technician in Health Department but the competent authority wrongly misinterpreted service structure of government of KPK Health Department for Paramedics just to deprive the appellant from his valuable rights of service. Hence, the reason given in the impugned order is totally baseless, without substance and is liable to be set aside. Copies of Malaria course completion certificate and pay slip of the appellant are jointly annexed as **Annexure-K**.
- g. That appellant being citizen of Pakistan deserves to be dealt in accordance with law and the treatment meted out to him is in violation of Article 4 of our Constitution.

It is thus most respectfully prayed that on acceptance of this appeal, this worthy Tribunal may graciously be pleased to set-aside/reverse impugned order No. 1338/Court DATED 11/04/2018 and declare such order as illegal, void and devoid of merits. Consequently, appellant may please be reinstated in service with all back benefits. This appeal may please be allowed with costs. Any other relief deemed appropriate in

M. J. K.

circumstances of the case may also be allowed in favour of appellants as against respondents with costs.

Dated: 30/04/2019

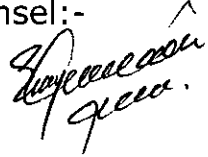
Your humble appellant


Muzamil Hussain

Through counsel:-


Muhammad Waqar Alam

Advocate High Court



CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Court.

30.04.2019

Appellant 

NOTE

Appeal with annexure along-with required sets thereof are being presented in separate file covers.

30.04.2019

Appellant's counsel 

Books Referred

1. 2018 PLC CS P#17
2. PLJ 2004 SC 216
3. 2012 SCJ 780
4. 2015 PLC CS 1519
5. 2016 PLC CS 682
6. 2012 PLC CS 1099

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR**

In S.A No. _____/2019

**Muzamil Hussain
(Appellant)****Versus****Govt: of KPK, etc
(Respondents)****AFFIDAVIT**

I, Muzamil Hussain appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all parawise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein is based on exaggeration or distortion of facts.

30.4.2019

[Signature]
 District Bar D. I. Khan
 RO & AC

[Signature]
 Deponent

Identified By:-

[Signature]
 Muhammad Waqar Alam

Muhammad Waqar Alam
 Advocate High Court,
 D.I.Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR**

In Service Appeal No. _____ 2019

MUZAMIL HUSSAIN

Versus

GOVT. Of KPK etc**APPLICATION FOR CONDONATION OF DELAY**

Respected Sir,

Appellant humbly submits as follows,

1. That the above titled appeal is being filed today accompanying this application, the contents of which may please be considered as integral part of instant appeal.
2. That the impugned order is received on 21/01/2019 during the proceedings of implementation petition of judgment dated 19/02/2018 pending before the worthy Service Tribunal. Copies of the same are already available on file. Hence, the delay (if any) may kindly be condone.
3. That instant appeal is being filed today which is well within time but if any way the service appeal of the appellant becomes time barred it may graciously be condoned in the light of circumstances mentioned above.

It is therefore, humbly requested that on acceptance of instant application the condonation of delay may kindly be accepted.

Dated: ___/04/2019

Your humble appellant


Muzamil Hussain

Through counsel:-


Muhammad Waqar Alam
 Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR**

In Service Appeal No. _____ 2019

**Muzamil Hussain
(Applicant/Appellant)****Versus****Govt. Of KPK etc
(Respondents)****AFFIDAVIT**

I, Muzamil Hussain appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all parawise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein is based on exaggeration or distortion of facts.

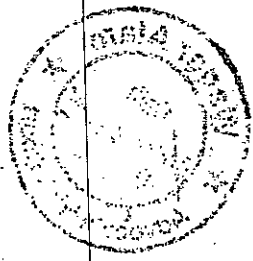
30.04.2019



30/4/19

Deponent

A handwritten signature in black ink, appearing to read "Muzamil Hussain".



OFFICE OF THE DISTRICT HEALTH OFFICER TANK.

-12-
"Ai"

No: 1013-151

Dated: 25/04/2013.

To

Mr. Muzamil Hussain S/O Mohammad Jehangir
R/O Village Jabbar Wala District Dikhan.

Subject: OFFER OF APPOINTMENT.

Memo

The Govt: hereby offers you a post of Jr. PHC Technician (MF) Insect Collector against the vacant post of under the control of this office in BPS-09 Viz: @ Rs 6200-380-17600/-PM 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. Your appointment in the Health Department is purely on temporary Basis and your services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that you may belong to a post other than one to which you are recruited.
2. You have to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You 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 you may belong.
4. If you accept the offer on the above conditions you should report to this for further duty within fifteen (15) days of the receipt of this letter, failing which your services will be terminated.
5. The appointment will be subject to the production of Medical Fitness Certificate.

[Signature]
DISTRICT HEALTH OFFICER
TANK.

Cc: -

1. District Accounts Officer, Tank.
2. Account Clerk of this Office.
3. Estab: Clerk of this office.

25-04-2013

DISTRICT HEALTH OFFICER
TANK.

ATTESTED
[Signature]

[Large handwritten signature]

0346 888 6002

خدمتِ صاب ۵۴۵ صاحب نام ملک صلح خانک

Amex 'B'

صاحب عالی



B

گزارش یہ ہے کہ میں نے ۲۱ ج مورخہ ۱۱-۵-۱۴ کے آرڈر

نمبر ۱۵۵۱ مورخہ ۳۰-۴-۱۴ کے طالب لی ایچ یو قصبہ

سرحا ضروری کر دی ہے

بہذا یہ مالی فرمائش میری Arrival Report

منظور کی جائے۔

میں کی عین نوازش ہوگی

نرخہ ۱-۵-۲۰۱۴

ATTESTED

Signature

مذکورہ صاب صاحب سیردار
لی ایچ یو قصبہ

Signature

Forwarded to D.H.O. Tank
for information and N/A please

Dated
11/05/2014
B.H.U. Cherna.

Signature

Medical

Med No. 4

MEDICAL CERTIFICATE

Amber B-2

Name of Official Muhammad Hussain

Caste or Race Baloch

Father's Name Muhammad Jalangir

Residence village Jabbar walla Teh. & Dist. D. I. Khana

Date of Birth 23.05.1996 (12101-1407971-9)

Exact height by measurement 5-6"

Personal marks of identification word scar lateral to Rt eye

Signature of the Official [Signature]

Signature of

head of office

Seal of Office [Signature]

ATTESTED [Signature]

I do hereby certify that I have examined Mr. Muhammad Hussain a candidate for employment in the Office of the D. H. O. Tank and can not discover that he had any disease communicable or other constitutional effication or bodily infirinity except

I do not consider this as disqualification for employment in the office of the D. H. O. Tank. His age according to his own statement year and by appearance about years.

Attested [Signature]

LEFT HAND THUMB AND FINGER IMPRESSIONS

Medical Superintendent
Civil Hospital
Dist. [Signature]

OFFICE OF DISTRICT HEALTH OFFICER
TANK


No. 1051 /04/2014

Dated

DIKhan the 30 /04/2014

OFFICE ORDER

Mr. Muzamil Hussain Jr: PHC Tech: (MP) Insect Collector attached to this office is hereby directed to report for duty at BHU Cheena with immediate effect in the interest of public services.

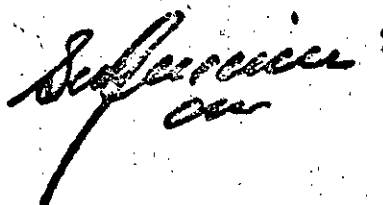

District Health Officer
Tank

CC

- 1- Incharge BHU Cheena.
- 2- Establishment Clerk of this office.
- 3- Accountant of this office.


District Health Officer
Tank

ATTESTED



*Attested
Muzamil
Jr*

Annex: D



OFFICE OF THE DISTRICT
HEALTH OFFICER DISTRICT TANK

Phone: 0963 510755

Fax: 0963 510753

NO: 1220

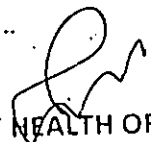
DATED 15/04/2015

Mr. Muzamil Hussain S/o Muhammad Jehangir,
R/o Village Jabbar Wala District D.I. Khan.

Subject: - TERMINATION ORDER.



Memo,
You were appointed by ex: DHO, District Tank vide this office order bearing no. 1013-15 dated 25-04-2013 and your services are hereby terminated on the following grounds:

1. No Advertisement.
2. No proper selection committee constituted.
3. No criteria are issued for the post of Insect Collector.
4. You have a domicile of District D.I. Khan which is against the Government rules.
5. Your persist absence from the duty of so called appointment.

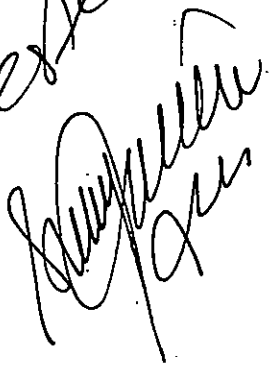

DISTRICT HEALTH OFFICER
DISTRICT TANK

No: _____ / Dated 15/4/2015.

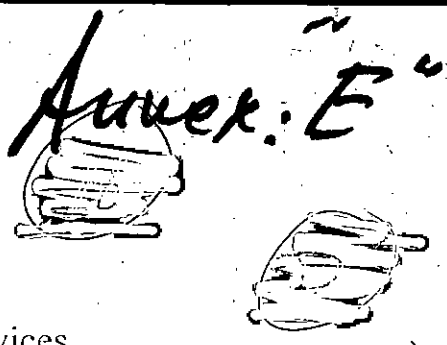
- Copy to the:
1. Account Clerk.
 2. Office File for record.

ATTESTED



DISTRICT HEALTH OFFICER
DISTRICT TANK

Attested


-17-

Annex: E


The Director General Health Services,
Khyber Pakhtunkhawa Peshawar.
(Appellant Authority)

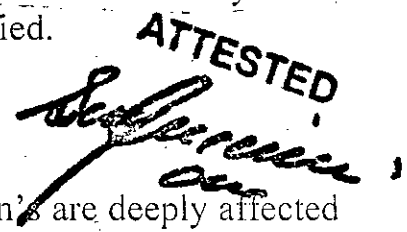
Subject:- APPEAL AGAINST UN LAWFULL TERMINATION.

R/Sir,

With due respect and humble submission, I have the honour to state that I was appointed as JCT Multipurpose (Insect Collector) in BPS-09 vide District Health Officer Tank orders No. 1013-15/ dated 25/04/2013, (Photo copy attached) and since my posting I have regularly performing my duties in filed by the orders of the Ex-DHO Tank.

I was appointed against the vacant post and my salary form was sent to District Accounts Officer Tank for salary against the vacant post of Insect Collector in BPS-09 and the District Accounts Officer Tank properly checked my salary form and verified for activation of my pay and I have been allotted Personal No. 00717508 which can be verified from the Computer record, but subsequently the District Accounts Officer Tank instantly stop my pay without any cogent reason.

And now the District Health Officer Tank terminate my service vide his letter No. 1220/ dated 15/04/2015, (Photo copy attached) without observing codal formalities as in this connection neither any explanation has been called nor any show cause notice were issued to me, which is un-lawful and un justified.

ATTESTED



R/Sir,

I belong to a very poor family and my aged parents and children's are deeply affected due to my termination from service.

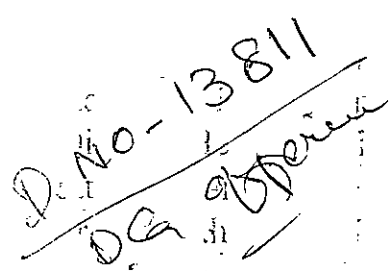
It is therefore, requested to kindly consider my appeal on humanitarian grounds and issued necessary orders regarding my re-instatement into service and release of my salaries along with all back benefits.

I shall be highly obliged for your this act of kindness.

Yours obedient servant


08-5-15

Mr. Muzamil Hussain s/O
Mohammad Jehangir Village
Jabbar Wala DIKhan.

D. No - 13811


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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR, CAMP

DIKHAN

Service Appeal No. _____/2015

Muzamil Hussain s/o Muhammad Jahangir R/o
Jabbar Wala, Dera Ismail Khan.

(PETITIONER)

VERSUS

1. **Government of KPK, through secretary Health Department, KPK Peshawar.**
2. **Secretary to Govt: of KPK, Health Department, Peshawar.**
3. **Director General Health services, KPK Peshawar.**
4. **Director (Administration), Director general health services, KPK Peshawar.**
5. **District Health officer (DHO), District Tank.**
6. **District Accounts Officer, District Tank**

ATTESTED
[Signature]

..... (RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. 1220/ DATED 15.04.2015 ISSUED BY RESPONDENT NO.5/DHO, TANK, WHEREBY APPELLANT WAS TERMINATED FROM SERVICE AND AGAINST THE OMISSION ON THE PART OF RESPONDENT

**NO.3 FOR INDICISION OF THE DEPARTMENTAL
APPEAL WHICH IS AGAINST THE LAW AND IN
VIOLATION OF SERVICES LAWS AND RULES
AND THE APPELLANT WAS CONDEMNED
UNHEARD WITH MALAFIDES.**

PRAYER

On acceptance of this appeal, impugned order No. 1220 dated 15.04.2015 issued by respondent No.5 may please be reversed and set-aside and respondents be directed to reinstate the appellant in service with all back benefits.

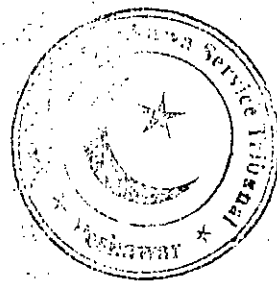
Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

ATTESTED
[Signature]

Respectfully Sheweth;

1. That the present appellant was appointed as Jr.PHC Technician (MP) Insect collector (BS.9) vide appointment order No. 1013-15 dated 25.04.2013 in health Department. The appellant submitted his arrival report and medical certificates and joined his services. Copy of appointment order of Appellant is annexed as "Annexure A". Copy of arrival report is also annexed as "Annexure B" and copy of medical certificate is annexed as "Annexure B/1".
2. That thereafter, appellant was posted at BHU Cheena vide office order No. 1051. dated 30.04.2014, copy whereof is enclosed as Annexure C".
3. That services of the appellant continued till 2015 without ant stain and stigma and he performed his

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



Appeal No. 957/2015

Date of Institution ... 11.08.2015

Date of Decision ... 19.02.2018

Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar Wala, Dera Ismail Khan.
... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Secretary Health Department,
Khyber Pakhtunkhwa, Peshawar and 5 others. ... (Respondents)

MR. MUHAMMAD WAQAR ALAM,
Advocate

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties

> heard and record perused.

ATTESTED

[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

FACTS

2. The brief facts are that the appellant was appointed as Junior PHC Technician on 25.04.2013. His services were terminated vide impugned order dated 15.04.2015 without solid justification. He preferred departmental appeal on 08.05.2015 which was not responded within stipulated period, hence, the instant service appeal.

ATTESTED

[Signature]

ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as Junior PHC Technician (BPS-09) vide order dated 25.04.2013. Vide impugned order dated 15.04.2015 his services were terminated without assigning any reason. He preferred departmental

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appeal on 08.05.2015 which was not responded, hence, the instant service appeal. He argued that the appellant was appointed after observance of all codal formalities It has been held by the august Supreme Court of Pakistan with in case where appointments are termed as illegal by the respondents action should be taken against government officials responsible making such appointments instead of affected employees. Opportunity of due process and fair trial were denied to him and as such he was condemned unheard. Reliance was placed on case reported as 2003 SCMR 1110, PLJ 2004 SC 216, 2012 SCJ 780, 2015 PLC (C.S) 1519 and judgment of this Tribunal dated 25.10.2017 passed in service appeal no: 878/2016 titled "*Shafiq-ur-Rahman-vs-Govt. of Khber - Pakhtunkhwa, through Secretary Health Department, Khyber Pakhtunkhwa Peshawar and 3 others.*"

4. On the other hand learned District Attorney argued that his services were terminated because codal formalities were not observed by the competent authority during the course of his appointment. Moreover, he remained absent after appointment so action taken against him is fully justified under the rules.

CONCLUSION.

ATTESTED
[Signature]

5. Careful perusal of record would reveal that the appellant was appointed by the competent authority as is evident from the appointment order dated 25.04.2013. He assumed the charge and started performing duties. Para-1 of the termination is very strange, wherein it is mentioned that you were appointed by Ex-DHO District Tank and without observing codal formalities. It is a sufficient proof that his service by terminated by the successor of Ex-DHO, which smacks of malafide/ personal grudge and extraneous influence on the part of the officer concerned. He was bound to follow law and rules. It has not been disputed by the respondents that the appellant fulfilled the required qualification for the said post and was eligible for appointment. Once a person is appointed a vested right is created and appointment cannot be withdrawn without following the due process of law. In the present circumstances the appellant was condemned unheard.

ATTESTED
[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar



6. As a nutshell to the above discussion, the appeal is accepted. Impugned order dated 15.04.2015 is set aside and the appellant is reinstated into service with the direction to the respondents to examine his case to ascertain whether he is eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant. Parties are left to bear their own costs. File be consigned to the record room.

Announced
19.02.2018

Ed/- Ahmad Hassan

Member
Cafeteria

Ed/- M. Anis Khan Kundi
Member

Certified to be true copy
K. S. ...
Peshawar

ATTESTED
[Signature]

Date of Presentation of Application 12-3-18
 Number of Wards 1800
 Copying Fee 8/-
 Urgent 2/-
 Total 10/-
 Name of Copyist [Signature]
 Date of Completion 12-3-18
 Date of Delivery of Copy 12-3-18

ED

wa

Annex: "G" -23-

To,
The District Health Officer,
District Tank.

**SUBJECT: COMPLIANCE OF ORDER DATED 19/02/2018
PAASSED BY KPK SERVICE TRIBUNAL IN APPEAL
NO. 957/2015.**

Respected Sir,

1. That the applicant's service appeal no. 957/15 was very graciously allowed by the learned service tribunal on 19/02/2018 and certain directions to be issued to your good self. Copy enclosed.
2. That the applicant moved an application dated 16/05/2018 regarding compliance of the order and personal hearing but your good self is reluctant to reinstate the applicant on his post according to the verdict of service tribunal and not summon the applicant to attend the office to give chance of hearing on the matter.

So, your good self is requested to implement the order of court as early as possible in the interest of justice.

Dated: 03/12/2018

Muzammil Hussain

s/o M. Jahangir

Dera ismail Khan

Cell# 0342-936-8595

Copy forwarded to

1. DG, Health KPK, Peshawar.

No. 421

-23-A
5/11

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Received a registered*
addressed to

[Handwritten signature]

Date-Stamp

Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Initials of Receiving Officer *[Handwritten initials]*

Insured for Rs. (in figures) *[Handwritten]* (in words) *[Handwritten]*

insured.

Insurance fee Rs. *[Handwritten]* Ps. *[Handwritten]* (in words) *[Handwritten]* Weight *[Handwritten]* Grams *[Handwritten]*

Name and address of sender *[Handwritten]*

No. 422

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. *[Handwritten]*

Received a registered*
addressed to

[Handwritten signature]

Date-Stamp

Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Initials of Receiving Officer *[Handwritten initials]*

Insured for Rs. (in figures) *[Handwritten]* (in words) *[Handwritten]*

Insurance fee Rs. *[Handwritten]* Ps. *[Handwritten]* (in words) *[Handwritten]* Weight *[Handwritten]* Grams *[Handwritten]*

Name and address of sender *[Handwritten]*

Annex: H

-24-



OFFICE OF THE DISTRICT
HEALTH OFFICER DISTRICT TANK

Phone: 0963-510755

Fax: 0963-510755

No. 1338 /Court:

Dated// 10/4/2018

To

The Honourable Registrar
Khyber Pakhtunkhwa,
Service Tribunal Peshawar.

Subject: - ORDER JUDGMENT IN APPEAL NO.957/2015, MR. MUZAMIL KHAN
HUSSAIN

R/Sir,

Reference your good -self letter bearing No. 432/ST dated 01/03/2018 annexed with verdict in the shape of Judgment dated 19/02/2018 of honourable Khyber Pakhtunkhwa ,Service Tribunal Peshawar

I have the honour to submit that as per direction of the Khyber Pakhtunkhwa , Service Tribunal Peshawar contained in the judgment dated 19/02/2018 after thoroughly examination of the case by providing him fully opportunity of hearing, Mr. Muzamil Hussain son of Muhammad Jahangir resident of Jābaar Wala District D.I.Khan in ineligible candidates for the post Junior PHC Tech: as per approved service structure of Government of Khyber Pakhtunkhwa health Department for paramedics and this office is unable to reinstate the concerned petitioner . The relevant law is annexed herewith for your good- self perusal.

Muzamil Khan
DISTRICT HEALTH OFFICER
DISTRICT TANK

No. 1339 /
Copy is forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa.
2. SO litigation Health Department Khyber Pakhtunkhwa.
3. DAO Tank.
4. Mr. Muzamil Hussain S/O Muhammad Jahangir R/O Jabaar Wala District D.I.Khan.
5. Master File.

ATTESTED
S. J. Khan

DISTRICT HEALTH OFFICER
DISTRICT TANK

Annex. H-I

Government of N.W.F.P.

Health Department

DATED PESHAWAR THE 10TH MAY 2006

Notification :

No. SOH-III /8-60/05(Paramedics)

EIGHT STAGE PARAMEDICS
SERVICE STRUCTURE
OF N.W.F.P.

ATTESTED
[Signature]

| 1 | 2 | 3 | 4 | 5 | 6 |
|-----|---|---|--|-------------|---|
| 93. | Clinical Technologist (Gastroenterology) BPS-17 | 50% by initial recruitment with Bachelor Degree in relevant field from Medical Faculty OR Recognize Institution | 50% by promotion from amongst Chief Clinical Technicians BPS-16 in relevant field on basis of seniority cum fitness with 5 years service as such | 18-40 years | 50% by initial recruitment 50% by promotion |
| 94. | Senior Clinical Technologist (Gastroenterology) BPS-18 | 50% by initial recruitment with Master Degree in relevant field from Recognize Institution / MPH/M All Sc | 50% by promotion from amongst Clinical Technologist BPS-17 on basis of seniority cum fitness with 7 years service as such. | 18-45 years | 50% by initial recruitment 50% by promotion. |
| 95. | Chief Clinical Technologist (Gastroenterology) BPS-19 | _____ | 100% by promotion from amongst Senior Clinical Technologist BPS-18 on basis of seniority cum fitness with 7 years service as such | _____ | By promotion |
| 96. | Principal Clinical Technologist (Gastroenterology) BPS-20 | _____ | 100% by promotion from amongst Chief Clinical Technologist BPS-19 on basis of seniority cum fitness with 7 years service as such | _____ | By promotion |

(PART-XIII)

(PRIMARY HEALTH CARE-MULTI-PURPOSE)

| | | | | | |
|------|--|---|--|-------------|--|
| 97. | Junior Primary Health Care Technician (Multi-purpose) BPS-9 | SSC with Science from recognized board and certificate from NWFP Medical Faculty / recognized institution in relevant field / Health Technology | _____ | 18-25 years | By initial recruitment |
| 98. | Primary Health Care Technician (Multi-purpose) BPS-12 | 50% by initial recruitment with Diploma in relevant field / Health Technology from Medical Faculty OR Recognize Institution | 50% by promotion from amongst Junior Clinical Technicians relevant field on basis of seniority cum fitness with 5 years service as such | 18-38 years | 50% by initial recruitment 50% by promotion |
| 99. | Senior Primary Health Care Technician (Multi-purpose) BPS-14 | _____ | 100% by promotion from amongst clinical technician BPS-12 in relevant field on seniority cum fitness with 4 years service as such | _____ | By promotion |
| 100. | Chief Primary Health Care Technician (Multi-purpose) BPS-16 | _____ | 100% by promotion from amongst clinical technician BPS-14 in relevant field on seniority cum fitness with 4 years service as such | _____ | By promotion |
| 101. | Primary Health Care Technologist (Multi-purpose) BPS-17 | 50% by initial recruitment with Bachelor Degree in relevant field from Medical Faculty OR Recognize Institution | 50% by promotion from amongst Chief Clinical Technicians BPS-16 in relevant field on basis of seniority cum fitness with 5 years service as such | 18-40 years | 50% by initial recruitment 50% by promotion |
| 102. | Senior Primary Health Care Technologist (Multi-purpose) BPS-18 | 50% by initial recruitment with Master Degree in relevant field from Recognize Institution / MPH/M All Sc | 50% by promotion from amongst Clinical Technologist BPS-17 on basis of seniority cum fitness with 7 years service as such | 18-45 years | 50% by initial recruitment 50% by promotion |

ATTENDED
 19/11/2018

HEALTH OFFICER OF THE DISTRICT
 OFFICE OF THE DISTRICT TANK
 Phone: 0963-510755
 Fax: 0963-510755
 11/11/2018

-26-



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

EXECUTION PETITION NO. 195 OF 2018

Khyber Pakhtunkhwa Service Tribunal
Diary No. 682
Dated 13/06/2016

Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar Wala, Dera Ismail Khan.
(Petitioner)

Versus

1. Director General Health services, KPK Peshawar.
2. District Health officer (DHO), District Tank.

(Respondent)

EXECUTION PETITION

That the petitioner hereby applies for execution of the Judgement herein below as follows:

| | | |
|---|--|---|
| 1 | Suit No. | Service Appeal No. 957/2015 |
| 2 | Name of Parties | Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar Wala, Dera Ismail Khan. (PETITIONER) VERSUS 1. Government of KPK, through secretary Health Department, KPK Peshawar. 2. Secretary to Govt. of KPK, Health Department, Peshawar. 3. Director General Health services, KPK Peshawar. 4. Director (Administration), Director General health services, KPK Peshawar. 5. District Health officer (DHO), District Tank. 6. District Accounts Officer, District Tank (RESPONDENTS) |
| 2 | Date of Judgment | 19/02/2018 |
| 3 | Whether any Appeal preferred from Department | Nil |
| 4 | Previously execution petition is filled or not | No. |

ATTESTED
[Signature]

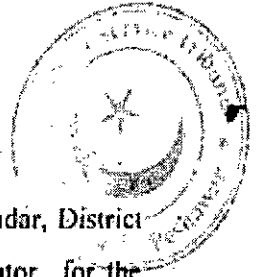
ATTESTED
[Signature]

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 195/2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 13.06.2018 | <p>The execution petition submitted by Mr. Muzammil Hussain through Mr. M. Waqr Alam Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;">REGISTRAR 13/6/18.</p> |
| 2 | 14.6.2018 | <p>This execution petition be put before Touring S. Bench at D.I.Khan on 13-9-2018.</p> <p style="text-align: right;">S.D/- CHAIRMAN</p> |
| | 13.09.2018 | <p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 27.11.2018 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;">S.D/- (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p> <p style="text-align: right;">ATTESTED <i>[Signature]</i></p> |
| | 27.11.2018 | <p>Counsel for the petitioners present. Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the petitioner requested for adjournment. Adjourned. To come up for further proceedings on 21.01.2019 S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;">S.D/- (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p> <p style="text-align: right;">ATTESTED <i>[Signature]</i></p> <p style="text-align: right;">Khan Secretary D.I.Khan</p> |



21.01.2019

Petitioner in person and Mr. Farhaj Sikandar, District Attorney alongwith Samiullah, Data Entry Operator for the respondents present.

Representative of respondents has produced copy of letter dated 11.04.2018 issued by DHO, Tank, wherein it is noted that the petitioner was ineligible candidate for the post of Junior PHC Technician as per approved Service Structure of Government of Khyber Pakhtunkhwa Health Department, the office was therefore, unable to reinstate him. The letter alongwith its enclosures is placed on record and a copy has been handed over to the petitioner who seeks adjournment on account of non-availability of his learned counsel. Adjourned to 26.02.2019 before S.B at camp court, D.I.Khan.

SD/ Chairman
Camp Court D.I. Khan

ATTESTED
[Signature]

I want to withdraw instead Execution Petition and submit application in this respect.

26.02.2019

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant submitted application for withdrawal of the present service appeal on the ground mentioned in the application. Application is placed on record. In this regard signature of learned counsel for the appellant was also obtained at the margin of order sheet as a token of proof.

In the light of above application, the present service appeal is dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED
26.02.2019

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

Certified true copy
[Signature]
Khyber Pakhtunkhwa
Peshawar

محکمانہ اپیل

بخدمت جناب ڈائریکٹر جنرل ہیلتھ سروسز خیبر پختونخواہ پشاور

محکمانہ اپیل برخلاف حکم نمبری 1339 مورخہ 11/04/2018

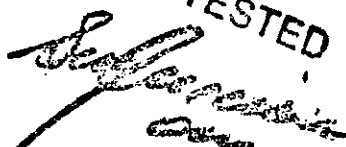
مصدرہ ازاں جناب ڈسٹرکٹ ہیلتھ آفیسر ٹانک

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ من سائل مورخہ 25/04/2013 کو بطور Jr. PHC Tech. (MP) Insect Collector خالی آسامی پر بھرتی ہوا تھا اور باقاعدہ میڈیکل بورڈ کرانے کے بعد Duty سرانجام دیتا چلا آیا اور من سائل کو DAO ٹانک میں پرسنل نمبر 00717508 بھی الاٹ کیا گیا تھا اور اس نسبت جون 2014 کی نسبت Salary میو واضح ہے۔

۲۔ یہ کہ من سائل کو جناب DHO صاحب نے بلا کسی قانونی وجہ کے مورخہ 15/04/2015 کو ملازمت سے بے بنیاد الزامات لگا کر برخاست کر دیا تھا جس کو وجہ بنا کر من سائل نے محکمہ کو اپیل گزاری جو کہ محکمہ نے پھر بھی من سائل کو آسامی پر بحال نہ کیا تو من سائل نے عدالت کے دروازے پر دستک دی جو کہ رنگ لائی اور من سائل کی سروس اپیل مورخہ 19/02/2018 کو بحق من سائل برخلاف محکمہ منظور ہوئی جس میں محکمہ کو من سائل کی بحالی کی نسبت حکم صادر فرمایا گیا جو کہ محکمہ نے من سائل کی بحالی تو درکنار من سائل کو کسی قسم کی شنوائی کا موقع تک فراہم نہیں کیا اور من سائل کے بارہ دفتر چکر لگائے اور استدعا کی کہ سائل کو بحکم سروس ٹریبونل ملازمت پر بحال فرمایا جائے لیکن من سائل کی شنوائی نہیں ہوئی تو مجبوراً سائل نے سروس ٹریبونل میں درخواست اجراء دائر کی جس میں محکمہ نے مورخہ 21/01/2019 کو سروس ٹریبونل میں من سائل کے خلاف جاری کردہ برطرفی آرڈر مورخہ 11/04/2018 جمع کرایا گیا اور ساتھ Rules کی نقل بھی لگائی گئی تھی دریں نسبت من سائل کو حکم مورخہ 11/04/2018 عدالت کی کاروائی میں حوالے کئے گئے تھے اس لئے من سائل محکمہ کے حکم مورخہ 11/04/2018 کو مندرجہ ذیل وجوہات کی بنیاد پر چیلنج کرتا ہوں۔

ATTESTED



وجوہات :-

i۔ یہ کہ حکم مورخہ 11/04/2018 برخلاف من سائل یکطرفہ طور پر جاری کیا گیا ہے اور تمام کاروائی

مندرجہ حکم مورخہ 11/04/2018 جعلی، بناوٹی اور حقوق سائل کے خلاف ہے اس لئے قابل درستی ہے۔

ii - یہ کہ من سائل کو نہ تو جناب DHO صاحب ٹانک نے دفتر حاضری کرنے دی اور نہ ہی بمطابق بحالی حکم ملازمت کیا بلکہ دفتر میں بیٹھ کر فرضی کاروائی کر کے من سائل کو ناقابل تلافی نقصان پہنچانے کی کوشش کی ہے جو کہ یہ فعل قابل درستی ہے اور من سائل ملازمت پر بحال کا حقدار ہے۔

iii - یہ کہ من سائل تمام ضروری لوازمات ملازمت رکھتا تھا لیکن من سائل کو یہ کہہ کر ملازمت سے برخاست کیا گیا کہ من سائل مطلوبہ کوائف پورے نہیں کرتا ہے، غلط عمل ہے اور محکمہ کی طرف سے جانبداری کا ثبوت ہے من سائل کے قیمتی حقوق پامال کئے گئے ہیں من سائل کو شنوائی کا موقع تک نہیں دیا گیا۔ جو کہ اس طور حکم مورخہ 11/04/2018 قابل منسوخی ہے۔

iv - یہ کہ حکم مورخہ 11/04/2018 جناب رجسٹرار صاحب سروس ٹریبونل کو ارسال کیا گیا ہے جبکہ من سائل بھی اس حکم کو لینے کا حقدار تھا جو کہ محکمہ نے چھپائے رکھا اور من سائل کے اجراء کی کاروائی میں مورخہ 21/01/2019 کو جناب سروس ٹریبونل کے چیئرمین کے سامنے پیش کیا بدیں وجہ من سائل کی اپیل اندر معیاد ہے۔ مذید یہ کہ من سائل سروس ٹریبونل حکم کی بحال کی نسبت Writ Petition #18 میں بھی عدالت عالیہ پشاور ہائی کورٹ بیج ڈیرہ اسماعیل خان گیا ہوا ہے۔ لیکن اب من سائل دادرسی کیلئے آنجناب کو اپیل کرتا ہے کہ من سائل کو ملازمت پر بحال فرمایا جائے اور حکم مورخہ 11/04/2018 مصدرہ جناب DHO کو کالعدم قرار دیا جائے تاکہ انصاف کے تقاضے پورے ہو سکیں۔

مورخہ 23/01/2019

مزل حسین ولد جہانگیر سکنہ ڈیرہ اسماعیل خان

موبائل نمبر 0342-9368595

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نوٹ:- حکم مورخہ 11/04/2018 من سائل کو سروس ٹریبونل عدالت کے اندر مورخہ 21/01/2019 اجراء

کی کاروائی میں موصول ہوا ہے۔

No. 167

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Received a registered addressed to

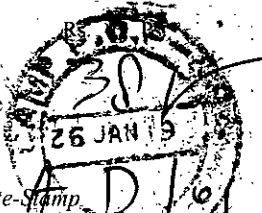
Date Stamp

Initials of Receiving Officer

Insured for Rs. (in figures) (in words)

Insurance fee Rs. (in words) Weight Kilo Grams

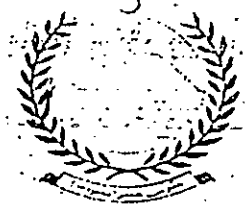
Name and address of sender



ATTESTED
Handwritten signature

If insured.

Annex: K-32



OFFICE OF DISTRICT HEALTH OFFICER DERA ISMAIL KHAN

MALARIA SUPERVISOR'S TRAINING COPELTION CERTIFIGATE

ATTESTED

[Handwritten signature]

This is certified that Mr. Muzamil Hussain S/O Jehangir R/O Village Jabbar Wala District DIKhan has undergone Voluntarily Training of "Malaria Supervisor" vide this office order No: 276-78/MCP dated 08-01-2013 for the Period of 03 Months with effect from 10-01-2013 to 10-03-2013 and he is well versant to the Job of Malaria Supervisor.

His work and conduct remained satisfactory during the period of training.

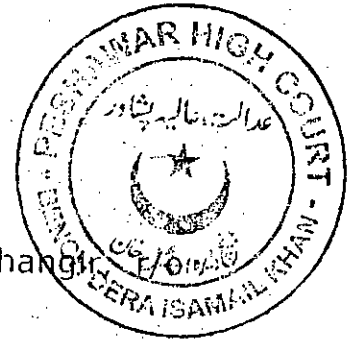
Mohd. Javed
Signature
Malaria Supervisor

[Signature]
District Health Officer
Dera Ismail Khan
District Health Offices
D.I.Khan

[Large handwritten signature]

BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
BENCH DERA ISMAIL KHAN

Writ Petition No. _____/2018



Muzammil Hussain, son of Muhammad Jahangir
Jabbar Wala, Dera Ismail Khan.

..... **Petitioner**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Health, KPK, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer (DHO), District Tank.
4. Accountant General Khyber Pakhtunkhwa, Peshawar through District Accounts Officer, Tank.

..... **Respondents.**

ATTESTED

WRIT PETITION UNDER ARTICLE, 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISATN 1973 AGAINST THE ILLEGAL AND
UNJUSTIFIED ACT/OMMISSION ON THE PART OF
RESPONDENTS IN CASE OF PETITIONER AND
NOT TREATED IN ACCORDANCE WITH LAW.

Prayer:

ON ACCEPTANCE OF THE INSTANT WRIT PETITION AN
APPROPRIATE WRIT MAY PLEASE BE ISSUED
DECLARING THE INDECISION/OMISSION OF
RESPONDENTS IN THE CASE OF PETITIONER BY NOT
REINSTATING INTO SERVICE AS ILLEGAL, UNLAWFUL,
WITHOUT LAWFUL AUTHORITY, IN VIOLATION OF THE

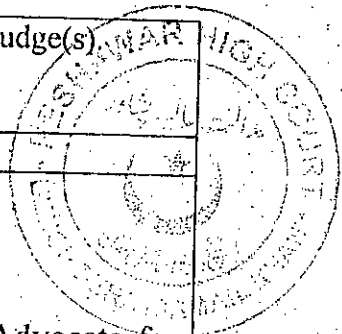
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EXAMINOR
Peshawar High Court
D.I. Khan Bench
29/04/18

IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH

FORM OF ORDER SHEET

| Date of order or proceedings (1) | Order or other proceedings with signature of Judge(s) (2) |
|-------------------------------------|---|
| 24.4.2019 | <p><u>W.P.No.1174-D/2018.</u></p> <p>Present:- Muhammad Waqar Alam, Advocate for petitioner.</p> <p style="text-align: center;">***</p> <p>S.M. ATTIQUE SHAH, J.- At the very outset, the learned counsel for the petitioner stated at the bar that he is under instructions from his client not to press the instant petition and requested for withdrawal of the same.</p> <p>2. Dismissed as withdrawn.</p> <p><u>Announced.</u> <u>Dt: 24.4.2019.</u></p> |



ATTESTED

[Handwritten signature]

[Handwritten signature]
JUDGE

[Handwritten signature]
JUDGE

*OK
24/4*

*Certified to be true copy
29-04-19
Peshawar High Court
Authorised Officer*

GR No. 2127

Application No. 26-04-19

Copying Fee Rs

No of Papers 06 page

Copying Fee 04

Urgent Fee 248

Total Fee 248

Copy ready for delivery 29-04-19

Copy delivered on 29-04-19

Signature of Examiner *[Handwritten signature]*

Imran*

(D.B)
Hon'ble Mr. Justice S.M. Attique Shah
Hon'ble Mr. Justice Shakeel Ahmad

29-04-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 957cf2015

Muzamil Hussain S/o Mohammad Jehangir R/o Jabbar Wala, Tehsil & District
Dera Ismail Khan

(Appellant)

Versus:-

Government of Khyber Pakhtunkhwa through Secretary, Health and others

(Respondents)

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT NO.1 to 5

PRELIMINARY OBJECTIONS.

ATTESTED
[Signature]

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

RESPECTFULLY SHEWETH

ON FACTS.

- Para. 1. This Para is pertained to record, hence, no comments.
- Para. 2. This Para is also pertained to record, hence, no comments.
- Para. 3. This Para is correct to the extent that the services of the appellant were terminated on the grounds that the neither advertisement was made nor proper selection committee was constituted. Further, the appellant is the resident of Dera Ismail Khan and remained absent after his appointment. Similarly, the Government has not formulated new criteria for the post of Insect Collector. (Notification attached)
- Para. 4. This Para is correct to the extent that the appellant has preferred his representation but the same was filed by the Appellate Authority.
- Para. 5. Since the appointments were made in violations of rules without observing codal formalities, hence, appellant was terminated on the grounds mentioned above and there was no need to inform the appellant regarding rejection of his departmental appeal.
- Para. 10. Incorrect, vehemently denied. The appellant has no legal or vested right to invoke the jurisdiction of Service Tribunal.

ATTESTED
[Signature]

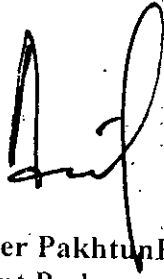
GROUND.

- Para. A. Incorrect, perversely denied. The acts and deeds of the Respondents in the vast interest of the general public are just, legal and covered with the rules and policies given by the Government and could not be violated any of the rules or policies for the interest of an individual.
- Para. B. Incorrect, vigorously denied. The appellant remained absent from his duties after his appointment. The appellant possess the domicile of District D.I.Khan which shows that he has no interest in the service at Tank.
- Para. C. Incorrect, intensively denied. The appellant was terminated after completing all the codal formalities in letter and spirit according to rules and existing policies.
- Para. D. Incorrect forcibly denied. The referred judgment is not related to the case of the appellant.
- Para. E. Incorrect, fervently denied. The detailed reply has already been given in the paras supra.
- Para. F. Incorrect, vehemently denied. The termination order was issued in accordance with law and rules and the petitioner has not been discriminated at all.

PRAYER

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

Secretary to



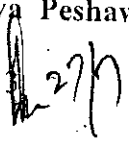
Government of Khyber Pakhtunkhwa
Health Department Peshawar
Respondent No 1 & 2

Director General Health Services



Khyber Pakhtunkhwa Peshawar

Respondent No 3



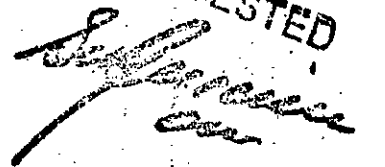
(District Health Officer)

Tank

Respondent No 5



ATTESTED



GOVERNMENT OF N.W.F.P.
HEALTH DEPARTMENT.

No.SOB.HD. 1-1.2006-07.PHSA
Dated Peshawar the 12th May. 2007

To,

- 1. The Director General Health Services, NWFP, Peshawar.
- 2. All Executive District Officer, Health, NWFP.
- 3. All Medical Superintendent, DHO Hospital in NWFP.
- 4. The Director Health Services, FATA, NWFP.
- 5. All Executive District Officer, Finance ^{and planning} NWFP.

SUBJECT:- IMPLEMENTATION OF PARAMEDICS SERVICE STRUCTURE.

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith a copy of letter No. 149 PHSA.HRD.PSS.2006-07.9198 dated 7.5.2007 alongwith copies of the code of different categories of staff allotted by Finance Department in implementation of revised Eight Stage Paramedics Services Structure of NWFP.

It is therefore requested that, implement the new code allotted by Finance Department during the current financial year 2006-07 for reflection in the Budget Book for the year 2007-08 at District level.

Encl. As above.

Yours faithfully,

(Signature)
(KHAN ZALI)
SECTION OFFICER (BUDG)

Encls: of even number & date:

Copy forwarded to the:

- 1. Budget Officer-VI, Finance Department, Govt. of NWFP, Peshawar.
- 2. Director, Provincial Health Services Academy, NWFP, Peshawar with the request to pursue the case with all of the above quarter under intimation to Health Department.

(Signature)
SECTION OFFICER (BUDGET)

APK / ER 20
Section Officer
m/ahm
Health
5/15/07

ATT
(Signature)

-39-

Existing Designation

New Designation

| Code | Designation | BPS | Posts | Code | Designation | BPS | Posts |
|---|----------------------------------|-----|---------|--------------|---|---------|-------|
| District Health Services (Malaria) Tank | | | | | | | |
| Code | Name of post | BPS | 2005-06 | Name of post | BPS | 2005-06 | |
| A116 | Assistant Malaria Superintendent | 8 | 1 | J066 | Junior Primary Health Care Technician (Multi Purpose) | 9 | 1 ✓ |
| M051 | Microscopist | 6 | 2 | J067 | Junior Clinical Technician (Pathology) | 9 | 2 |
| J008 | Insect Collector | 5 | 1 | J066 | Junior Primary Health Care Technician (Multi Purpose) | 9 | 1 ✓ |
| M004 | Malaria Inspector | 5 | 2 | J066 | Junior Primary Health Care Technician (Multi Purpose) | 9 | 2 |
| M006 | Malaria Supervisor | 5 | 7 | J066 | Junior Primary Health Care Technician (Multi Purpose) | 9 | 7 |
| 13 | | | | Total | | | |
| | | | | 13 | | | |

District Health Services Tank

Total

13

| | | | | | | | |
|------|---------------------|----|---|-------|--|----|---|
| C233 | CDC Supervisor | 11 | 1 | P249 | Primary Health Care Technician (Multi Purpose) | 12 | 1 |
| S012 | Sanitary Supervisor | 11 | 1 | P249 | Primary Health Care Technician (Multi Purpose) | 12 | 1 |
| 2 | | | | Total | | | |
| | | | | 2 | | | |

Tehsil Head Quarter Hospital Tank

Total

2

| | | | | | | | |
|------|-----------------------------|---|---|-------|--|----|---|
| B055 | Blood Bank Technician | 9 | 1 | J067 | Junior Clinical Technician (Pathology) | 9 | 1 |
| D019 | Dental Technician | 9 | 1 | J071 | Junior Clinical Technician (Dental) | 9 | 1 |
| H020 | Head Dispenser | 8 | 1 | C319 | Clinical Technologist (Pharmacy) | 17 | 1 |
| A042 | Anaesthesia Assistant | 6 | 1 | C308 | Clinical Technician (Anaesthesia) | 12 | 1 |
| C079 | Compounder | 6 | 3 | S327 | Senior Clinical Technician (Pharmacy) | 14 | 1 |
| | | | | C304 | Clinical Technician (Pharmacy) | 12 | 1 |
| D078 | Dispenser | 6 | 5 | J073 | Junior Clinical Technician (Pharmacy) | 9 | 1 |
| | | | | C504 | Clinical Technician (Pharmacy) | 12 | 3 |
| O011 | Operation Theatre Assistant | 6 | 1 | J073 | Junior Clinical Technician (Pharmacy) | 9 | 2 |
| R002 | Radiographer | 6 | 2 | C309 | Clinical Technician (Surgical) | 12 | 1 |
| L001 | Laboratory Assistant | 5 | 3 | J078 | Junior Clinical Technician (Radiology) | 9 | 2 |
| | | | | J067 | Junior Clinical Technician (Pathology) | 9 | 3 |
| 18 | | | | Total | | | |
| | | | | 18 | | | |

Rural Health Centre Tank

Total

18

| | | | | | | | |
|------|----------------------|----|----|-------|--|----|---|
| H040 | Health Technician | 12 | 1 | P246 | Primary Health Care Technologist (Multi Purpose) | 17 | 1 |
| D019 | Dental Technician | 9 | 2 | J071 | Junior Clinical Technician (Dental) | 9 | 2 |
| H048 | Health Technician | 9 | 10 | P246 | Primary Health Care Technologist (Multi Purpose) | 17 | 1 |
| | | | | C299 | Chief Primary Health Care Technician (Multi Purpose) | 16 | 2 |
| L012 | Lady Health Visitor | 9 | 2 | P249 | Primary Health Care Technician (Multi Purpose) | 12 | 7 |
| | | | | S338 | Senior Primary Health Care Technician (MCH) | 14 | 1 |
| C079 | Compounder | 6 | 3 | P247 | Primary Health Care Technician (MCH) | 12 | 1 |
| L001 | Laboratory Assistant | 5 | 3 | J073 | Junior Clinical Technician (Pharmacy) | 9 | 3 |
| | | | | J067 | Junior Clinical Technician (Pathology) | 9 | 2 |
| | | | | C306 | Clinical Technician (Pathology) | 12 | 1 |
| 21 | | | | Total | | | |
| | | | | 21 | | | |

ATTESTED
[Signature]

SH:1 Tank
 Pers #: 00717508 Buckle:
 Name: MUZAMIL HUSSAIN
 TECHNICIAN
 CNIC No. 1210114079719
 GPF Interest Free
 09 Active Temporary

P Sec:001 Month:June 2014
 TK7012 -District Health Officer (H
 Health
 NTN:
 GPF #:
 Old #:

| | | |
|--------------------------------|-----------|--------|
| | TK7012 | |
| PAYS AND ALLOWANCES: | | |
| 0001-Basic Pay | 6,200.00 | |
| 1000-House Rent Allowance | 1,146.00 | |
| 1210-Convey Allowance 2005 | 1,840.00 | |
| 1300-Medical Allowance | 1,000.00 | |
| 1971-Adhoc Allowance 2011@ 15% | 573.00 | |
| 1973-Adhoc Allowance 2010@ 50% | 1,910.00 | |
| 2118-Adhoc Relief Allow (2012) | 1,240.00 | |
| 2148-15% Adhoc Relief All-2013 | 930.00 | |
| 5002-Adjustment House Rent | 1,146.00 | |
| Gross Pay and Allowances | 29,678.00 | |
| DEDUCTIONS: | | |
| GPF Balance | 595.00 | Subtr: |
| 3501-Benevolent Fund | 180.00 | |
| 3511-Addl Group Insurance | 7.00 | |
| 3604-Group Insurance | 67.00 | |

Total Deductions 849.00
 28,829.00

D.O.B
 23.05.1996
 00-Years-02-Months 007-Days

LFP Quota: 4
 Payment through DDO.

[Handwritten Signature]
ATTESTED

SH:2 Tank
 Pers #: 00717508 Buckle:
 Name: MUZAMIL HUSSAIN
 TECHNICIAN
 CNIC No. 1210114079719
 GPF Interest Free
 09 Active Temporary

P Sec:001 Month:June 2014
 TK7012 -District Health Officer
 Health
 NTN:
 GPF #:
 Old #:

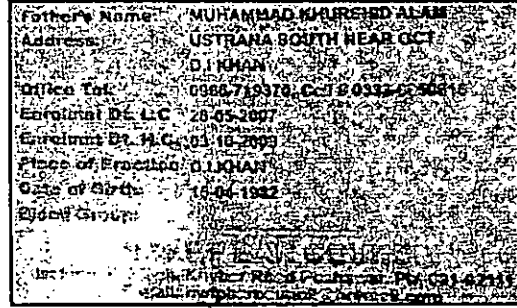
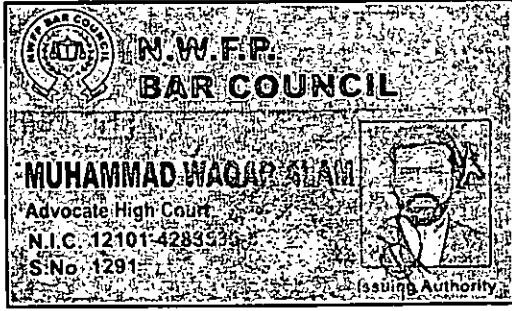
| | | |
|---------------------------------|-----------|--------|
| | TK7012 | |
| PAYS AND ALLOWANCES: | | |
| 5011-Adj. Conveyance Allowance | 1,840.00 | |
| 5012-Adjustment Medical All | 1,000.00 | |
| 5309-Adj. 15% Adhoc Allowance | 930.00 | |
| 5898-Adj. Adhoc Allowance 50% | 1,910.00 | |
| 5911-Adj. Adhoc Relief 2011 | 573.00 | |
| 5938-Adj. Adhoc Relief All 2012 | 1,240.00 | |
| 5801-Adj Basic Pay | 6,200.00 | |
| Gross Pay and Allowances | 29,678.00 | |
| DEDUCTIONS: | | |
| GPF Balance | 595.00 | Subtr: |

Total Deductions 849.00
 28,829.00

D.O.B
 23.05.1996
 00 Years 02 Months 007 Days

LFP Quota:
 Payment through DDO.

وکالت نامہ



The learned KPK Service Tribunal Reshmaan جناب

Appellant Muzamir Hussain منجانب

Govt of KPK نام دعویٰ یا جرم

Service appeal تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جوابدہی برائے پیشی یا تصفیہ مقدمہ بمقام D. I. Khan کیلئے

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

کوحسب ذیل شرائط بر ذیل مقرر کی ہے، کہ ہر پیشی پر خود بذریعہ اختیار خاص رد و عدالت حاضر ہونا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں، اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا، تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا پایا نہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخل صاحب موصوف مل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی و اپیل و نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی یا راضی نامہ و فیصلہ پر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا، اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از پکھری صدر پیروی مقدمہ مذکورہ نظر ثانی و اپیل و نگرانی و ہر آدمی مقدمہ یا منسوخی ڈگری یکطرفہ یا درخواست حکم امتناع یا ترقی یا گرفتاری قبل از فیصلہ اجراءے ڈگری کا بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ متناہ پیروی کا اختیار ہوگا اور تمام ساختہ پر داخل صاحب موصوف مل کردہ ذات خود منظور و قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزئی کاروائی یا بصورت درخواست نظر ثانی اپیل یا نگرانی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر سز کو اپنے بجائے یا اپنے ہمراہ مقرر کریں، اور ایسے مشیر قانون کو بھی ہمراہ میں وہی اور ایسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور وہ ان مقدمہ میں جو کچھ ہر جائز التواء پڑے گا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوزی ٹیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ کسی مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے۔ تاکہ سند رہے

Accepted مورخہ _____ ماہ _____ 20

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔
 العبد _____ العبد _____ العبد _____

محمد وقار عالم ایڈووکیٹ ہائی کورٹ

MUZAMIR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal.No.585/2019

Muzzamil Hussain

Versus

Govt. of KPK etc:

REPLY ON BEHALF OF RESPONDENTS

RESPECTFULLY SHEWETH:

1. That the appeal is not maintainable and incompetent in the eyes of law in the present form.
2. That the appellant is estopped due to his own conduct to file this appeal.
3. That the appellant has got no cause of action and locus standi to file instant appeal.
4. That the appellant does not come to this Tribunal with clean hands and has suppressed all relevant facts.
5. That the appeal is bad for misjoinder/non-joinder of necessary parties.
6. That the appeal is badly time barred and the appellant has concealed the material facts from Honorable Tribunal.
7. That the Honorable Service Tribunal has no jurisdiction to entertain the instant appeal in its present form.
8. That the appeal is weak having no force, fabricated, fictitious, based on ill will, mollified and having no footings in the eyes of law.
9. That the proceeding with instant appeal would be a futile exercise and just wastage of the precious time of this Honorable Tribunal.
10. That as stated in the objection supra, the appeal is bereft of cause of action and is liable to dismissal.

ON FACTS:

1. Para No.1 of the appeal is totally incorrect. Not admitted, because the appointment of the appellant was illegally made without observing codal formalities, hence the question of appointment is incorrect.
2. This Para pertains to personal data of appellant.

3. That in case of present appellant, the answering respondent took action and examined the total procedure of appellants' appointment, it reveals that according to advertisement the required age for appointment as Junior Clinical Technician is 18-30, but at the time of appointment the appellant already underage reflects from the Medical Fitness Certificate attached by the appellant himself in his service appeal on Page No. 14, as well as the appellant also does not diploma holder hence in these circumstances the appellant have not an appropriate right to reinstatement in service. Since the appointment were made in violation of rules without observing codal formalities, hence, appellant was terminated on the grounds mention above and there was no need to inform the appellant regarding rejection of his department appeal.
4. That the Para No.4 of appeal pertains to record.
5. That the Para No.5 pertains to appellant record.
6. This Para incorrect. The reply already submitted through above Paras.
7. That the Para No.7 pertains to record.
8. That the actual position of the appellant is already explained by the answering respondents, the appellant misconceived the department as well as Learned Service Tribunal with the bogus and fake circumstance of the case, hence liable to be dismissed.
9. That the appellant has no cause of action or locus standi to bring the instant appeal and has no right to invoke the jurisdiction of Honorable Service Tribunal with filing of fresh/new appeal.
10. Incorrect. Not admitted and denied.

ON GROUNDS

- a. All the illegal appointments including appointment of appellant were removed are just and according to law, hence the case of the appellant is weak at this point.

- b. Not admitted. Denied. All the process of appointment was made lonely by the then District Health Officer, Tank (EDO Health Tank), in mis-exercise of powers, thus incorrect.
- c. In light of judgment of Service Tribunal, the respondents examined the eligibility of the appellant, provided him opportunity of personal hearing, found him ineligible/not qualified to be appointed against the impugned post.
- d. The impugned order has been passed by the competent authority in accordance with the judgment of Service Tribunal.
- e. Each and every case has its own merits and demerits.
- f. This Para is totally incorrect and not admitted because the appellant could not be reinstated in service according to rules.
- g. The appointment of appellant was made in result of mis-exercise of powers of the then District Health Officer, Tank as submitted through above Paras hence in these circumstances the answering respondents have not made any violation of the Constitution in Article 4 and also the appellant did not come to this Honorable Tribunal with clean hands, thus denied.

It is, therefore, most humbly prayed that on acceptance of this Para Wise comments, this Honorable Tribunal may very graciously be please to dismiss the instant appeal of the appellant with costs.



SECRETARY HEALTH DEPARTMENT

Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



DIRECTOR GENERAL HEALTH SERVICES

Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)



DISTRICT HEALTH OFFICER
District Tank. (Respondent No.3)