

ORDER

19.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in Service Appeal bearing No. 698/2019 "titled Dr. Matiullah Versus Director General Health Services Department, Khyber Pakhtunkhwa Peshawar and others", the instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

19.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

02.12.2020

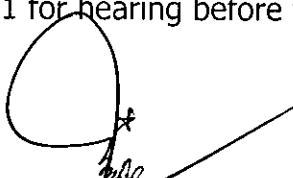
Due to pandemic of Covid-19, the case is adjourned to 23.02.2021 for the same as before.


Reader

23.02.2021

Junior to counsel for the appellant and Mr. Asif Masood, DDA alongwith Saleem Javed, Litigation Officer for the respondents present.

Former requests for adjournment as he is engaged before the Honourable High Court today in ^a number of cases. Adjourned to 01.06.2021 for hearing before the D.B.


(Mian Muhammad)
Member(E)



Chairman

01.06.2021

Appellant present through counsel.

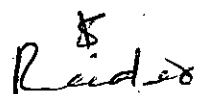
Muhammad Rasheed learned Deputy District Attorney alongwith Nazeer Ahmad Assistant for respondents present.

Bench ^{is} incomplete as learned Member Executive (Mian Muhammad) is on leave, therefore, case is adjourned to 29.09.2021 for hearing before D.B.


(Rozina Rehman)
Member(J)

29-9-21

DB is on Tour case to come up
For the same on Dated. 19-1-22


Reader

30.01.2020

None for the appellant present. Asst: AG for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 31.03.2020 before D.B. Appellant be put on notice for the date fixed.


Member


Member

31.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 23.06.2020 before D.B.


Reader

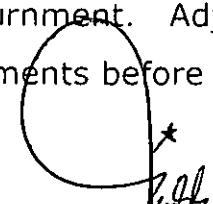
23.06.2020

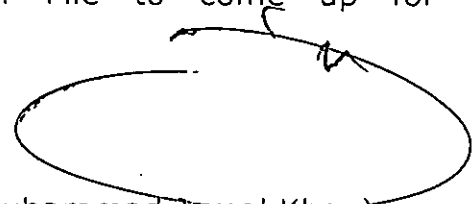
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 21.09.2020 before D.B.


Reader

21.09.2020

Appellant himself alongwith Mr. Umer Farooq, junior to senior counsel Mr. Noor Muhammad Khattak, Advocate are present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is present. Junior counsel submitted that his senior has proceeded to village due to having some issues there and requested for adjournment. Adjourned to 02.12.2020. File to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

24.09.2019

Junior to counsel for the appellant and Addl. AG alongwith Shah Nawaz Senior Clerk for respondents No. 1 to 3 present.

Representative of the respondents No. 1 to 3 furnished Parawise comments, which are placed on record. Nemo for respondent No. 4 present. Fresh notice be issued to respondent No. 4 for submission of requisite reply/comments positively on 21.10.2019 before S.B.


Chairman

21.10.2019

Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

Respondents No.1 to 3 have already submitted their respective parawise comments. Notice be issued to respondent No.4 for submission of requisite reply/comments on 21.11.2019, by way of last chance.


Chairman

21.11.2019

Junior to counsel for the appellant and Addl. AG for the respondents present.

Respondents No. 1 to 3 have already furnished the requisite reply/comments. Respondent No. 4 has not furnished reply/comments despite last opportunity. The appeal is assigned to D.B for arguments on 30.01.2020. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

27.06.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Senior Women Medical Officer) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the deduction of Rs.1,48,165/- from her salary of the month of January, 2019.

Points raised need consideration. The present service appeal is admitted for regular hearing but subject to all the legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 26.08.2019 before S.B.

Appellant Deposited
Security & Process Fee


27/6/19


Member

26.08.2019

Appellant in person and Addl. AG alongwith Shah Nawaz, Junior Auditor for the respondents present.

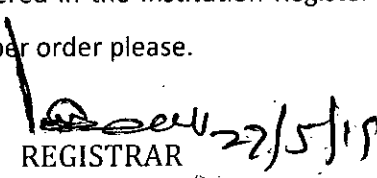

Representative of the respondents seeks time for submission of written reply. To come up for requisite reply/comments on 24.09.2019 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 698/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/05/2019	<p>The appeal of Dr. Matiullah resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	28/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/06/19</u></p> <p> CHAIRMAN</p>

The appeal of Dr. Arshiya Ilyas Senior Medical Officer RHC Ekka Ghund Tribal District Mohmand received today i.e. on 21.05.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of impugned order dated 28.01.2019 and departmental appeal against it are not attached with the appeal which may be placed on it.
- 2- Annexure-D of the appeal is illegible which may be replaced by legible/better one.

No. 1004 /S.T,

Dt. 22-5- /2019



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,

That copy of the impugned dated 28.1.2019 and copy of Departmental appeal against the said orders are attached as annexure-F, Page-12 and annexure-G, Page-13, while objection on page 9 has been removed. Hence re-submitted today dated 27/5/2019.


27/5/2019.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 699 /2019

DR. ARSHIYA ILYAS

VS

HEALTH DEPTT:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
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2	Order	A	4.
3	Departmental appeal	B	5.
4	Judgment	C	6- 8.
5	Order dated 25.01.2019	D	9.
6	Attendance register	E	10- 11.
7	Impugned order	F	12.
8	Departmental appeal	G	13.
9	Vakalat nama	14.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 699 /2019

Diary No. 787

Dated 21/5/2019

Dr. Arshiya Ilyas, Senior Women Medical Officer (BPS-18),
RHC Ekka Ghund, Tribal District Mohmand.....**APPELLANT**

VERSUS

- 1- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Health Services Merged Area Districts, Merged Area Secretariat, Warsak Road, Peshawar.
- 3- The District Health Officer, Mohmand Tribal District.
- 4- The District Accounts Officer, Mohmand Tribal District.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28.01.2019 WHEREBY THE AMOUNT OF RS. 1,48,165/- HAS BEEN DEDUCTED FROM THE SALARY OF THE APPELLANT FOR THE MONTH OF JANUARY, 2019 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 28.01.2019 may very kindly be set aside and the respondents may kindly be directed to release the deducted salary of the appellant for twenty five days amounting of Rs.1,48,165/-.
Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of the respondent Department and is serving as Senior Women Medical Officer (BPS-18) at RHC Ekka Ghund, Tribal District Mohmand. That right from appointment till date the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while serving as Senior Women Medical Officer (BPS-18) at RHC Ekka Ghund, District Mohmand was pre-maturely transferred to Type-D Hospital Mamad Gat along with his spouse vide order dated 14.12.2018. Copy of the order is attached as annexure.....**A.**

Filed to-day
21/5/19
Registrar

Re-submitted to-day
and filed.

Registrar
22/5/19

- 3- That appellant feeling aggrieved from the order dated 14.12.2018 filed Departmental appeal followed by writ petition No. 29-P/2019 before the Peshawar High Court, Peshawar which was decided in favor of the appellant vide judgment dated 09.01.2019 with the directions to the respondents to decide the Departmental appeal of the appellant strictly in accordance with law and rules. Copies of the Departmental appeal and judgment are attached as annexure.....**B & C.**
- 4- That in light of the judgment dated 09.01.2019 passed by the Honorable Peshawar High Court, Peshawar the respondent No.2 cancelled the transfer order dated 14.12.2018 to the extent of appellant and his spouse vide order dated 25.01.2019. Copy of the order dated 25.01.2019 is attached as annexure.....**D.**
- 5- That it is pertinent to mention that during the said period i.e. from 14.12.2018 to 25.01.2019 the appellant had regularly performed his duty at the concerned station quite efficiently but the respondent No.3 inspite of knowing the said fact deducted Rs.1,59,438/- of 25 days from the monthly salary of the appellant for the month of January, 2019 vide impugned order dated 28.01.2019. Copies of the attendance register and impugned order are attached as annexure.....**E & F.**
- 6- That appellant feeling aggrieved from the impugned order dated 28.01.2019 filed Departmental appeal but no reply has been received so far. Hence the appellant filed the instant appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**G.**

GROUND:

- A- That the impugned order dated 28.01.2019 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner while deducting the amount of Rs.1,59,438/- of 25 days for the month of January, 2019 vide order dated 28.01.2019, which is not tenable in the eye of law and the same is liable to be set aside.
- D- That the respondent No.3 inspite of knowing the fact that the appellant had regularly performed his duty in the above mentioned period i.e. 14.12.2019 to 25.01.2019 deducted the said amount from the salary of the appellant for the month of January, 2019.

E- That the action of the respondents amounts to forced labour and as such the impugned order dated 28.01.2019 is violative of Article-11 of the Constitution of Islamic Republic of Pakistan, 1973.

F- That the impugned order dated 28.1.2019 is also violative of Article 38(e) of the Constitution of Pakistan, 1973.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 20.05.2019

APPELLANT


DR. ARSHIYA ILYAS

THROUGH:
NOOR MOHAMMAD KHATTAK


&
MIR ZAMAN SAFI
ADVOCATES



OFFICE OF THE AGENCY SURGEON
MOHMAND TRIBAL DISTRICT

OFFICE ORDER

As approved by the competent authority vide his letter No. 26577/DHS/ADMIN dated 19-11-2018 the posting/transfer of following Senior Medical Officers (BPS-18) and Medical Officers (BPS-17) are hereby ordered with immediate effect in the best interest of public.

S.#	Name & Designation	From	To	Remarks
1	Dr. Matti Ullah Senior Medical Officer(BPS-18)	RHC Ekka Ghund	Type-D Hospital Mamad Gat	All move immediately
2	Dr. Arshiya Ilyas SWMO(BPS18)	RHC Ekka Ghund	Type-D Hospital Mamad Gat	
3	Dr. Muahammad Ajmal Medical Officer(BPS-17)	Type-D Hospital Mamad Gat	RHC Ekka Ghund	
4	Dr. Beena Rehman Woman Medical Officer(BPS-17)	BHU Michini	RHC Ekka Ghund	

Arrival/Departure report should be submitted to this office for record.

Sd/-----
Agency Surgeon
Mohmand Tribal District
Dated: 14/12/2018 ✓

No. 8161-66 /ASM

Copy forwarded to the:-

1. Director General Health Services KPK, Peshawar
2. Director Health Services Tribal Districts, Peshawar w/r to his letter No. noted above.
3. Deputy Commissioner Mohmand Tribal District.
4. Brigade Commander 103 Brigade Mamad Gat.
5. In-charges concerned Health Facility.
6. Officers concerned for strict compliance.

2: ?

14/12/18
Agency Surgeon
Mohmand Tribal District

ATTESTED

[Handwritten signature]

[Handwritten signature]

3000 → E/13

BETTER COPY PAGE-12

B-5

To

The Director Health Services,
Tribal District.

Subject: Cancellation of transfer order

R/Sir,

It is stated that I have been transferred by Agency Surgeon Mohmand (order No. 8161-66/ASM dated 14/12/2018) from RHC Ekka Ghund to type-D Hospital Mohammad Gat (Whose S/N/E shall not approved)

R/Sir,

This order was done in the same manner (order No. 5671-76 MSN dated 12/11/2018) which was cancelled y previous D.H.S Tribal District (26169-73 dated 15/11/2018)

You are therefore, requested to kindly cancel my transfer order and adjust MO Dr. Iqbal (Qualified Pediatrician) & his wife WMO Dr. Beena (Qualified Gynecologist) to Mohammad Gate Type -D Hospital.

Your Sincerely

Dr. Arshiya Ilyas
SWMO
RHC Ekka Ghund, Mohmand

ATTESTED

ATTESTED

The Inspector General Services

~~19~~ (19)

Tribunal D.H.H.

B-5

Subject: Cancellation of transfer order.

R/bu.

It is stated that I have been transferred by Agency Surgeon Mohd. Raza (order no. 14/13/15) from R.H.C. Englund to Type D Hospital Mohammed Qat (Case S/N/E 522 not affixed)

R/Su.

This order was done in the same manner (order no. 5671-76/MSM dated 12/11/15) which was cancelled by previous D.H.H. order dated 15/11/15.

Therefore, you are requested

to kindly cancel my transfer order of subject SAC at Jiballa (order no. 14/13/15) by Mr. Dr. Saad (order no. 14/13/15) to Type D Hospital (order no. 14/13/15)

Yours faithfully,

Dr. Saad

Dr. Saad

[Signature]

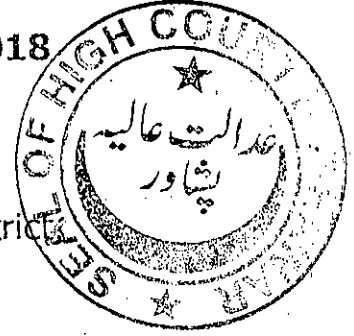
①

C-6

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION No. _____ / 2018

- 1- Dr. Mati Ullah, Senior Medical Officer (BPS-18),
RHC Ekka Ghund, Mohmand Tribal District under,
Transfer to BHU Mamad Gat, Mohmand Tribal District.
- 2- Dr. Arshiya Ilyas, Senior Medical Officer (BPS-18),
RHC Ekka Ghund, Mohmand Tribal District under,
Transfer to BHU Mamad Gat, Mohmand Tribal District.



..... **PETITIONERS**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director Health Services FATA (Merged Area), FATA Secretariat, Warsak Road, Peshawar.
- 5- The Agency Surgeon/District Health Officer, Mohmand Tribal District.
- 6- Dr. Mohammad Ajmal, Medical Officer (BPS-17),
BHU Mamad Gat, Mohmand Tribal District under,
Transfer to RHC Ekka Ghund, Mohmand Tribal District.
- 7- Dr. Beena Rehman, Medical Officer (BPS-17),
BHU Mamad Gat, Mohmand Tribal District under,
Transfer to RHC Ekka Ghund, Mohmand Tribal District.

..... **RESPONDENTS**

**WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF PAKISTAN 1973
AS AMENDED UP TO DATE**

**R/SHEWETH:
ON FACTS:**

ATTESTED
EXAMINER
Peshawar High Court
10 JAN 2019

**Brief facts giving rise to the present writ
petition are as under:**

- ATTESTED**
- 1- That PETITIONERS are belongs to medical field and are serving the respondent Department as Senior Medical Officer (BPS-18) at RHC Ekka Ghund, Mohmand Tribal District. That right from appointment till date the PETITIONERS have

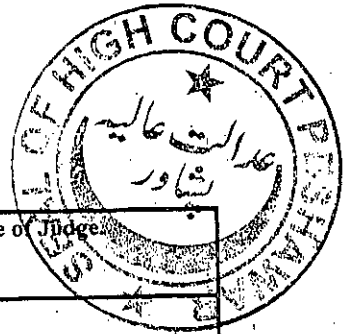
(2) (7)

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No:.....of.....



Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge
1	2	3
	ORDER 09.01.2019	<p><u>Writ Petition No.28-P/2019 with Interim Relief</u></p> <p>Present: Mr. Noor Muhammad Khattak, Adv., for Dr. Mati Ullah etc. petitioners.</p> <p>Mr. Mujahid Ali Khan, Addl. AG, for the respondents.</p> <p style="text-align: center;">*****</p> <p><u>SYED AFSAR SHAH, J.-</u> Dr. Mati Ullah and Dr. Arshiya Ilyas, the petitioners, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that order dated 14.12.2018 of respondent No.5, whereby, they have been transferred from RHC Ekka Ghund to Type-D Hospital Mamad Gat, being nullity in the eye of law, is of no legal effect whatsoever as the same is not only coram-non-judice being passed by incompetent authority but has been issued during the ban period.</p> <p>2. At the very outset, when we questioned the learned counsel for the petitioners that in view of bar contained in Article 212 of the Constitution of Islamic</p>

(Signature)

ATTESTED
EXAMINER
Peshawar High Court

10 JAN 2019

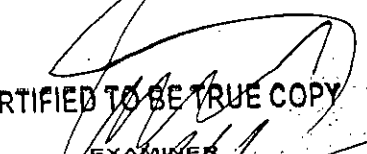
Republic of Pakistan, 1973 and in presence of competent forum, where the petitioners can well agitate their voice, whether we can adjudicate upon the matter at this juncture, the learned counsel by sensing that he isn't on so strong a wicket, straightaway requested that since the appeals / representations of the petitioners are pending adjudication before the departmental authority viz. Director General, Health Service / respondent No.3, he would be satisfied, if direction is made for the disposal of the same in accordance with law / rules in vogue. In this view of the matter, we without touching the merits of the case, lest it may prejudice the case of either party, would like to direct the aforesaid departmental authority to decide the appeals / representations of the petitioners one way or the other strictly in accordance with law / rules through a speaking order within seven working days positively, after receipt of this order, by communicating the decision to them in a proper mode and manner. This writ petition is disposed of in the above terms.

Announced.
09.01.2019


JUDGE


JUDGE

 (Fayaz) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Ishtiaq Ibrahim)


CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

10 JAN 2019

Better copy page no 09

Directorate of health services
Merged area secretariat Warsak road Peshawar
Ph: 091-9210213

OFFICE ORDER

The office order bearing endorsement No 8161-66/ASM dated 14-12-2018 issued by agency surgeon tribal district Mohmand regarding transfer of Dr Matti Ullah SMO (BS-18) & Dr Arshiya Ilyas SWMO (BS-18) at serial 1 & 2 is hereby cancelled and the remaining order will transfer will intact

Director health services,
Merged areas, Peshawar

NO 999-1004/DHS/Admn

dated 15/01/2019

DIRECTORATE OF HEALTH SERVICES

MERGED AREA SECRETARIAT WARSAK ROAD PESHAWAR

PH 091-9210212

FAX 091-9219110

D-9

OFFICER ORDER.

The office order bearing endorsement No. 8161-65/ASM dated 14-12-2018 issued by Agency Surgeon Tribal District Mohmand regarding transfer of Dr. Matti Ullah SMO (BS-18) & Dr. Arshiyas Ilyas SWMO (BS-18) at serial # 1 & 2, is hereby cancelled and the remaining order will intact.

Director Health Services,
Merged Areas, Peshawar

Dated 25/01/2019

NO 997/1007/DHS/Admin

Copy forwarded to the:-

- 1) Director General Health Services Khyber Pakhtunkhwa
- 2) Agency Surgeon Tribal District Mohmand
- 3) Deputy Commissioner Tribal District Mohmand.
- 4) Brigade Commander 103 Brigade Marnad Gal
- 5) Doctors concerned.

For information and necessary action.

4

Director Health Services
Merged Areas, Peshawar

Daily Attendance Register of the

for the Month of **JANUARY 2019**

Roll No. 1 2 3 4 5 6 7 8 9 10 11 12

Monday

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

29 30 31

Name: _____

Signature: _____

Date: _____

Present: _____

Absent: _____

Remarks: _____

Remarks: _____

Remarks: _____

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Int. Section No. _____
 /2019 for intake.
 Relief.
 Station Co. by P.H.C.
 CRDC-4 (09/01/2019)

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F-12

21/01
9/9

Agency Surgeon Mohd. Imran
150008 ASN

Abul Mulla, Ullah SMO
191326
177798

Deduction
159438
148165
25 days
25 days

Agency Surgeon
Mohd. Imran
Mohmand at Challanai

[Handwritten scribbles and signatures]
28/1/9

G-13

To,
The Agency Surgeon,
Tribal Distt. Mohmand.

Subj: Departmental appeal for release of Salary :-

R/Sir,

It is stated that as per directions of Honourable High Court of Peshawar ORDER Writpetition No. 28-D/2019 with Interim Relief
09/01/19

(Copy attached), the respondent (D.H.S Merged Area) cancelled my transfer order. (Copy attached) on 25/01/2019.

Our salaries of 25 days each of January 2019 have been deducted on 28/01/19 which is unjustice in light of the above orders.

Therefore, you are requested to kindly release us our salary.

With Many thanks

ATTACHED

g

Dr. Arshiyd Ilyas
S/NMRO R-H-C Enaglund
Trib. Distt. Mohmand

VAKALATNAMA

RP Service Tribunal Peshawar

OF 2019

Dr. Asbiya Ilyas

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Dr. Asbiya Ilyas

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2018

Asbiya Ilyas
CLIENT

Accepted
ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&

MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 699/2019

Dr. Arshiya Ilyas, SWMO BS-18

.....Petitioner

Versus

Govt: of Khyber Pakhtunkhwa and othersRespondents

S NO.	DETAIL	PAGE NO.	Description
1	Para wise Comments	1-3	
2	Letter dated 19.11.2018	4	A
3	Office order dated 14.12.2018	5	B
4	Absence notice dated 31.12.2018	6	C
5	Deduction letter of Finance Department	7	D
6	Absence notices dated 11.01.2019	8	E

①

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 699/2019

Dr. Arshiya Ilyas, SWMO BS-18

.....Petitioner

Versus

Govt: of Khyber Pakhtunkhwa and othersRespondents

Para wise comments on behalf of respondent No. 1, 2 & 3

Respectfully Sheweth;

Preliminary objections

1. That the appellant has got no locus standi to file the instant appeal because she did not obey the orders of high authorities and absented herself from her legitimate duties which shows clear violation from the terms and conditions of her appointment / Govt. service rules.
2. Hence, the appellant has got no cause of action to file the instant appeal.
3. That the appellant has not come to ther Honorable Court with clean hands and concealed the factual position.
4. That, the appellant is not an "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

ON FACTS

1. Correct. The appellant was performing her duty in RHC Ekkaghund District Mohmand since 2003.
2. Incorrect, the appellant was performing her duty in RHC Ekkaghund since 2003. It is pertinent to mention here that:
 - A Type-D Hospital in Mamad Gat area of District Mohmand was constructed and opened for general public.
 - Due to need basis and long tenure in RHC Ekkaghund, the services of the appellant were proposed to the said newly opened Hospital. The same proposal was also approved by the Director Health Services Merged Areas vide letter dated 19.11.2018 at Annex-A.

- The Deputy Health Officer, District Mohmand issued proper order in ther regards vide order dated 14.12.2018 at **Annex-B**, which was not complied by the appellant and absented herself from her legitimate duties which shows clear violation from the terms and conditions of her appointment / Govt. service rules. The Incharge of Type-D Hospital Mamad Gat also reported that the appellant has not resumed her duty till 28.12.2018.
 - Then the appellant was called explanation and 15 days' pay was deducted from her salary in light of Khyber Pakhtunkhwa Government Servant (E& D) Rules 2011 vide letter dated 31.12.2018 at **Annex-C** & **Annex-D** respectively but the appellant failed to comply.
 - On 11.01.2019, the appellant was again called explanation wherein 15 days' pay was again deducted vide letter at **Annex-E** but the appellant once again did not comply.
3. Correct to the extent of Writ Petition and direction of the Honorable High Court Peshawar. But it is pertinent to mention here that before and during the court proceedings, the appellant did not submit her arrival for duty at new duty station and absented herself from her legitimate duties.
 4. Correct to the extent of cancellation of transfer order in light of court orders but it is pertinent to mention here that the proceedings regarding her absence from duty at Type-D Hospital Mamad Gut were under process in shape of explanations and deduction of pay from her salary whereas the appellant did not bother to perform duty at her new duty station for a single day.
 5. Incorrect, the appellant was transferred from RHC Ekkaghund to Type-D Hospital Mamat Gut but she did not submit arrival report to her new duty station and remained absent from duty from 14.12.2018 to 25.01.2019. As far as deduction of 25 days from her salary is concerned, so it is stated that the Deputy Health Officer, District Mohmand has deducted 30 days salary vide two letters of explanation but the District Account Officer deducted only 25 days salary and 5 days salary was reserved for the purpose of GP Fund and Income Tax deduction.


(3)

6. Incorrect, the appellant has not yet submitted her departmental appeal and has no right to file the instant appeal because the appellant was transferred to Type-D Hospital Mamat Gut in the interest of public service.


GROUND

- A. Incorrect, there is no violation from any law and rules. Brief hertory has been given in Para 2 above.
- B. Incorrect as stated in Para-2 above.
- C. Incorrect, as stated in Para-5 above.
- D. Incorrect, the appellant was transferred from RHC Ekkaghund to Type-D Hospital Mamat Gut and did not submit arrival report to her new duty station, hence, remained absent from 14.12.2018 to 25.01.2019 and violated the terms and conditions of her appointment / Govt. service rules.
- E. Incorrect, as stated above.
- F. Incorrect, as stated above.
- G. Incorrect, the appellant has violated the terms and conditions of appointment / Govt. service. The department will also produce other proofs at the time of argument.


As the appellant being regular employee of the Provincial Health Department, has violated the terms and conditions of her appointment / Govt. service rules, therefore, it is most humbly prayed that the appeal may please be dismissed.


District Health Officer,
Tribal District Mohmand

Respondent No. 3


Director Health Services,
Merged Areas, Peshawar

Respondent No. 2.


Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Respondent No. 1

(4) A
DIRECTORATE OF HEALTH SERVICES

FATA SECRETARIAT WARSAK ROAD PESHAWAR

NO. 26577/ PH # 091-9210212 /DHS/ADMIN

FAX # 091-9212110

DATED: 19/11/2018

(o

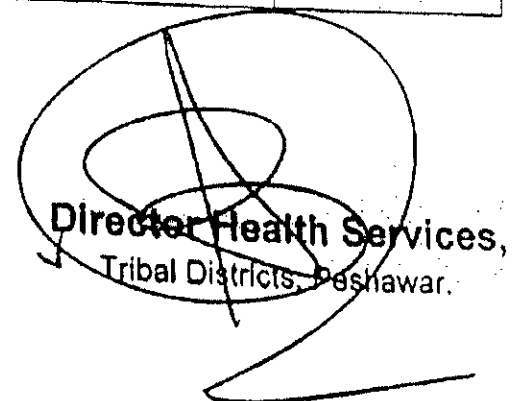
The Agency Surgeon,
Tribal District Mohmand.

Subject:- **PROPOSAL OF POSTING / TRANSFER**

Reference your letter No.5779/ASM dated 19-11-2018 on the subject noted above.

Approval for the following posting / transfer of Senior Medical Officer (BS-18) and Medical Officer (BS-17), is hereby accorded in the interest of public service

S#	Name	From	To	Remarks
1	Dr. Mati Ullah Senior Medical Officer (BS-18)	RHC Yakkagund	Type-D Hospital Mamad Gat	
2	Dr. Arshyia Ilyas SWMO (BS-18)	RHC Yakkagund	Type-D Hospital Mamad Gat	
3	Dr. Beena Rehman Women Medical Officer (BS-17)	BHU Machni	RHC Yakkagund	
4	Dr. Muhammad Ajmal Medical Officer (BS-17)	Type-D Hospital Mamad Gat	RHC Yakkagund	


Director Health Services,
Tribal Districts, Peshawar.

5

B



OFFICE OF THE AGENCY SURGEON
MOHMAND TRIBAL DISTRICT

OFFICE ORDR

As approved by the competent authority vide his letter No. 26577/DHS/ADMIN dated 19-11-2018 the posting/transfer of following Senior Medical Officers (BPS-18) and Medical Officers (BPS-17) are hereby ordered with immediate effect in the best interest of public.

S.#	Name & Designation	From	To	Remarks
1	Dr. Matti Ullah Senior Medical Officer(BPS-18)	RHC Ekka Ghund	Type-D Hospital Mamad Gat	All move immediately
2	Dr. Arshiya Ilyas SWMO(BPS18)	RHC Ekka Ghund	Type-D Hospital Mamad Gat	
3	Dr. Muahammad Ajmal Medical Officer(BPS-17)	Type-D Hospital Mamad Gat	RHC Ekka Ghund	
4	Dr. Beena Rehman Woman Medical Officer(BPS-17)	BHU Michini	RHC Ekka Ghund	


Arrival/Departure report should be submitted to this office for record.

Sd/-----
Agency Surgeon
Mohmand Tribal District
Dated: 14/12/2018

No. 8161-66 /ASM

Copy forwarded to the:-

1. Director General Health Services KPK, Peshawar
2. Director Health Services Tribal Districts, Peshawar w/r to his letter No. noted above.
3. Deputy Commissioner Mohmand Tribal District.
4. Brigade Commander 103 Brigade Mamad Gat.
5. In-charges concerned Health Facility.
6. Officers concerned for strict compliance.


14/12/18
Agency Surgeon
Mohmand Tribal District



6

C

OFFICE OF THE AGENCY SURGEON
MOHMAND TRIBAL DISTRICT

No: 8340 /ASM Dated: 31 /12/2018

To,

Dr. Arshiya Ilyas SWMO
Type-D Hospital Mamad Gat

Subject: Absence From Duty
Memo:

It is noted with concern that you were transferred to Type-D Hospital Mamad Gat vide this office order No. 8161-66/ASM dated 14-12-2018, and reported by the In-charge of Type-D Hospital Mamad Gat that you have not joined your duty in the new assigned Health Facility which shows disobedience on your part and remained absent from duty without any valid reason/prior permission of the competent authority.

Therefore you are hereby directed to explain your position of willful absence within 3-days otherwise, strict disciplinary action will be initiated against you under the E&D rules.

Moreover 15-days salary will be deducted from your pay through source-II.

[Signature]
31/12/18
Agency Surgeon
Mohmand Tribal District

No 8341-45 /ASM

Copy forwarded to the:

1. Director General Health Services KPK, Peshawar.
2. Director Health Services Tribal District Peshawar.
3. Deputy Commissioner Mohmand Tribal District.
4. Brigade Commander 103 Brigade Operational Area.
5. I/C Type-D Hosp: Mamad Gat.
6. I/C RHC Ekka Ghund is directed to relieve and delete her name from the attendance register with immediate effect
7. Head Clerk/Accountant of this office is hereby directed to deduct the salary from above mentioned officer.

[Signature]
31/12/18
Agency Surgeon
Mohmand Tribal District



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

(7)

D

No. SO(FR)/FD/5-14/2014
Dated Peshawar, the 16-12-2014

To,

1. Additional Chief Secretary, Khyber Pakhtunkhwa.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries, Govt; of Khyber Pakhtunkhwa.

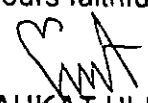
Subject: - **DEDUCTION OF SALARY FROM GOVT; EMPLOYEES IN CASE OF ABSENTEESUM**

Dear Sir,

I am directed to refer to the subject noted above and to state that it has come to the notice of the government that on some occasion government employees remain absent from duty without authorization or fail to perform their assigned duties. Such instances attract the provision of Fundamental Rules and Khyber Pakhtunkhwa Government servant (Efficiency and Disciplinary) Rules 2011. Accordingly, such government employee loses right to payment of pay and allowances for such periods besides making themselves liable for disciplinary proceedings. All concerned offices are duty bound to deduct pay and allowances of the defaulting government employees for the period of absence and non-performance of the duty.


I am further directed to convey that all Administrative Departments and their attached entities shall ensure implementation of the above legal provisions in letter & spirit.

Yours faithfully,


(SHAUKAT ULLAH)
SECTION OFFICER (FR)

Copy is forwarded to the: -

- Principal Secretary to Governor, Khyber Pakhtunkhwa.
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- PSO to Chief Secretary to Government of Khyber Pakhtunkhwa.
- Registrar, Peshawar High Court, Peshawar
- Accountant General, Khyber Pakhtunkhwa.
- All Heads of Attached Departments in Khyber Pakhtunkhwa.
- All Commissioners in Khyber Pakhtunkhwa.
- All Deputy Commissioners in Khyber Pakhtunkhwa.
- All District / Agency Accounts Officers in Khyber Pakhtunkhwa.
- Treasury Officer, Khyber Pakhtunkhwa.
- All officers in Finance Department.


SECTION OFFICER (FR)



(8)

E

OFFICE OF THE AGENCY SURGEON
MOHMAND TRIBAL DISTRICT

No: 131 /ASM Dated: 11 /01/2019

To,

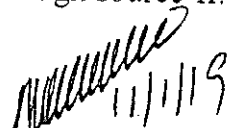
Dr. Arshiya Ilyas SWMO
Type-D Hospital Mamad Gat

Subject: **Absence From Duty**
Memo:

In continuation of this office letter No.8340/ASM dated 31-12-2018 that you are reported by the In-charge of Type-D Hospital Mamad Gat that you have still not joined your duty in the new assigned Health Facility which shows disobedience on your part and remained absent from duty without any valid reason/prior permission of the competent authority.

Therefore you are hereby directed to explain your position of willful absence within 3-days otherwise, strict disciplinary action will be initiated against you under the E&D rules.

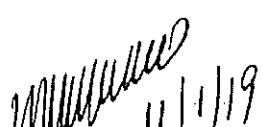
Moreover 15-days salary will be deducted from your pay through source-II.


Agency Surgeon
Mohmand Tribal District

No 132-37 /ASM

Copy forwarded to the:

1. Director General Health Services KPK, Peshawar.
2. Director Health Services Tribal District Peshawar.
3. Deputy Commissioner Mohmand Tribal District.
4. Brigade Commander 103 Brigade Operational Area.
5. I/C Type-D Hosp: Mamad Gat.
6. Head Clerk/Accountant of this office is hereby directed to deduct the salary from above mentioned officer.


Agency Surgeon
Mohmand Tribal District