

Appeal No. 1212/2015 , Dr. M. Sherin vs Govt

29.11.2016

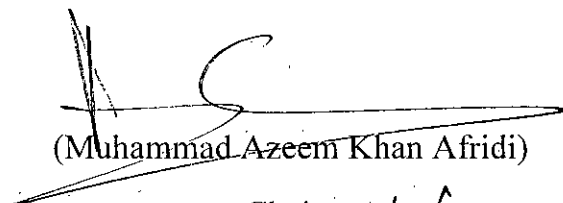
Appellant in person and Mr. Sultan Shah, Assistant and Yar Gul, Assistant alongwith Mr. Ziaullah, Government Pleader for respondents present.

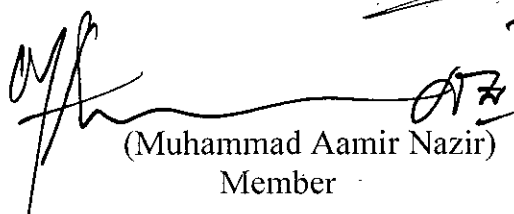
2. Dr. Muhammad Sherin hereinafter referred to as the appellant has preferred the instant service appeal against order dated 11.12.2014 and that of the appellate authority dated 30.04.2015 communicated to the appellant on 30.09.2015 vide which he was dismissed from service on the allegations of willful absence.

3. Arguments of the learned counsel for the appellant and learned Government Pleader heard and record perused.

4. The Tribunal was informed that the appellant has put in almost 25 years pensionable service and that the punishment awarded to him was excessive. Reliance was placed on case laws reported as 2007-PLC(C.S) 678 and 2007-PLC(C.S) 685 as well as judgment of this Tribunal passed in service appeal No. 979/2013 titled "Dr. Muzaffar Iqbal Versus the Chief Secretary Khyber Pakhtunkhwa Peshawar etc."

5. In view of the case-laws referred to above we are convinced that the penalty imposed against the appellant is excessive and we would, therefore, convert the same from dismissal to compulsory retirement. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Azeem Khan Afridi)


(Muhammad Aamir Nazir)
Member

Chairman

29.11.16

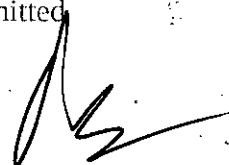
ANNOUNCED

29.11.2016

01.06.2016


Junior to counsel for the appellant and Mr. Amjad Ali, Assistant alongwith Ziaullah, GP for respondents present. Rejoinder submitted which is place on file. To come up for arguments on 18.7.2016.

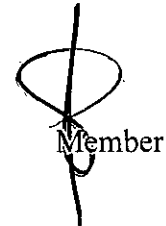

Member


Member

18.07.2016

Clerk to counsel for the appellant and Mr. Amjad Ali, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant was not available today. To come up for arguments on 21.10.2016.


Member


Member

21.10.2016

Counsel for the appellant, M/S Sultan Shah, Assistant and Yar Gul, Senior Clerk alongwith Mr. Usman Ghani, Sr.GP for respondents present. The learned Member Judicial Mr. Pir Bakhsh Shah is on leave therefore Bench is incomplete. To come up for arguments on 29-11-16 before D.B.


(ABDUL LATIF)
MEMBER

09.02.2016

Counsel for the appellant and Mr. Muhammad Arshed, SO alongwith Addl: A.G for respondents present. Written reply submitted by respondents No. 1, 4 and 5 while request for adjournment was made on behalf of respondents No. 2 and 3. Last opportunity granted. To come up for written reply/comments on behalf of respondent No. 2 and 3 on 14.4.2016 before S.B.


Chairman

14.4.2016

Agent of counsel for the appellant and Muhammad Arshad, SO alongwith Addl: A.G for respondents present. Written reply by respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 09.8.2016.


Chairman

09.05.2016

Counsel for the appellant submitted application for early hearing. Request is accepted. To come up for rejoinder and final hearing on 01.06.2016 instead of 09.08.2016. Notices be issued to the respondents.


Chairman

01.12.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Medical Officer when subjected to inquiry on the allegations of wilful absence and professional misconduct and dismissed from service vide impugned order dated 11.12.2014 where against he preferred departmental appeal on 12.1.2015 which was rejected on 30.4.2015 but communicated to the appellant on 30.9.2015 and hence the instant service appeal on 28.10.2015.

Appellant Deposited
Security & Process Fee

That neither regular inquiry was conducted nor opportunity of personal hearing afforded and, moreover, penalty proposed was reduction to lower grade while that of dismissal was awarded without any notice.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 5.1.2016.


Chairman

05.01.2016

Appellant with counsel, M/S Muhammad Arshed, SO and Yar Gul, Senior Clerk alongwith Assistant AG for respondents present. Requested for adjournment. To come up for written reply/comments on 9.2.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1212 /2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30.10.2015	<p>The appeal of Dr. Muhammad Sherin resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12-11-2015</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	12.11.2015	<p>Counsel for the appellant present. Seeks adjournment. Adjourned to 1.12.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>

The appeal of Dr. Muhammad Sherin r/o House No. 22 Street 2 F/10 Phase 6 Hayatabad Peshawar received to-day i.e. on 28.10.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of enquiry report mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Annexure D of the appeal is illegible which may be replaced by legible/better one.

No. 1669 /S.T,

Dt. 29-10 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Respected Sir

1- Removed

2- copy of inquiry report is not available with the appellant the same may be requisitioned from the department.

3- Removed

Resubmitted



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

Appeal No. 1212 /2015

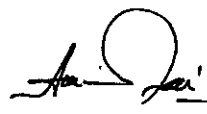
Dr. Muhammad Sherin V/S Government of KPK
etc.


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APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
Adv.


TAIMUR ALI KHAN
(ADV)

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

Appeal No. 1212 /2015

**G.W.P. Province
Service Tribunal
Diary No. 1300
Dated 28-10-2015**

Dr. Muhammad Sherin,
R/O House No. 22, Street-2, Sector-F/10,
Phase-6, Hayatabad. Peshawar.

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary, Government of Khyber Pakhtunkhwa, ~~Health~~ Department, Civil Secretariat, Peshawar.
5. The Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 30.04.2015 COMMUNICATED ON 30.9.2015 THROUGH RTI COMMISSION WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER OF DISMISSAL FROM SERVICE DATED 11.12.2014 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

~~Filed to-day~~
Registrar
28/10/15

Re-submitted to-day
and filed.
Registrar
30/10/15

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 30.04.2015 AND 11.12.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFIT OF SERVICE. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant joined the Health Department as Medical Officer in the year 1986 in BPS-17. The appellant was further promoted to BPS-18 as Senior Medical Officer in May, 1995 and promoted to BPS-19 in the year 2008 as Principle Medical Officer. The appellant through his service career has good service record being Skin Specialist in the Health Department and also has more than 25 years service.
2. That in February 2009, the appellant was transferred to Civil Hospital Barikot, Swat but due to Military operation and enmity with one Khushal Jan on land property, The appellant was expelled with him family from the village by the Jerga Members and due to that reasons the appellant could not reported his arrival at Civil Hospital Barikot, Swat.
3. That on 25.9.2012, the appellant reported his arrival at Civil Hospital Barikot which was duly forwarded to the Director General Health on 25.10.2012 by the EDO Health Swat. It is also worth to mention here that the appellant was not terminated from service by that time till the arrival at Civil Hospital Barikot.

Copies of Arrival and Forwarding letter are attached as Annexure-A and B.

4. That in February, 2013 a fact finding enquiry was ordered by the respondent No.4 for the absence w.e.f. 21.2.2009. The appellant submitted his detail reply to the fact finding inquiry committee and also some additional documents. Copies of letter dated 14.2.2013 and 20.2.2013 reply of appellant and application for additional documents are attached as Annexure-C, D, E and F.
5. That as the appellant was continuously performed his duty since 25.9.2012 and his pay was also stopped in March, 2013 due to the pending enquiry mentioned above, therefore the appellant submitted an application for finalization of the case and release of his salaries which met no response. Copy of Application is attached as Annexure-G.
6. That on 24.7.2014, the appellant was served with show cause notice with the proposed penalty of reduction to lower grade. The appellant submitted reply to the show cause notice and explained the whole position and situation. Copies of show cause notice and reply are attached as Annexure-H and I.
7. That on 11.12.2014, the appellant was dismissed from service by violating the proposed penalty in the show cause notice and without given any enhancement notice. The appellant submitted his representation against the said order on 12.1.2015. Copies of order and appeal are attached as Annexure-J and K respectively.
8. That the appeal of the appellant was rejected on 30.04.2015 which was sent on wrong address and was not received by the appellant, therefore, the appellant replied for the said rejection order through RTI which was communicated to the appellant on 30.9.2015. Copies of letter of RTI dated 30.9.2015

and rejection order are attached as Annexure-L, M and N respectively.

9. That now the appellant comes to this august Tribunal on the following grounds amongst the others:

GROUND:

- A) That the impugned orders dated 30.4.2015 and 11.12.2014 are against the law, facts, norms of justice and material on record, therefore, not tenable.
- B) That the appellant has been condemned unheard and has not been provided personal hearing by the competent authority rather the personal hearing was carried out by the respondent No.3 who was estranged to the proceedings.
- C) That no regular enquiry has been conducted and the appellant has been given major penalty of dismissal from service on the basis of fact finding enquiry which is the violation of the spirits of justice and various judgments of the Superior Courts in this regard.
- D) That the penalty of reduction to lower grade was proposed in the show cause notice whereas the appellant was given penalty of dismissal from service and without any enhancement notice, thus the appellant has not been treated according to law and rules.
- E) That even the competent authority has not passed any order of dispensing of regular enquiry and as such in absence of such order the penalty of

dismissal from service is not sustainable in the eyes of law.

- F) That the absence from duty was not intentionally but due to compelling situation explained to the fact finding enquiry committee with proof but despite that harsh views has been taken without considering more than 25 years service of the appellant at his credit.
- G) That the appellant has not been treated according to law and rules and has been penalized severely on the basis of fact finding enquiry report and as such the impugned orders are liable to be set aside.
- H) That even no reasons has been given while enhancing the penalty from reduction to lower grade of dismissal from service which is violation of Section-24(A) of the General Clause Act.
- I) That even reduction order is not a speaking order which is the violation of Section 24(A) of the General Clauses Act as well as Supreme Court Judgment reported as 1991 SCMR Page-2330.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT

DR. Muhammad Sherin.

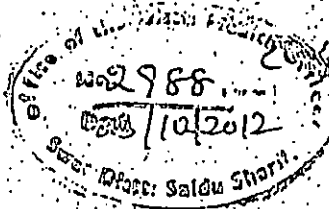
THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE,

& 
TAIMUR ALI KHAN
(Adv)

~~PESHAWAR.~~

10/58 A
Date 25/9/12 Jo



BARIKOT
SWAT

6

The
Executive officer
Health
SWAT at Saidu Sharyf

Sub: Arrival report

Sir
I have the honor to submit
my arrival report on 25.9.2012
morning at C.H. Barikot Swat

DR. Muhammad Sherin
SMO, C.H.
Barikot
25.9.2012 Swat

Forwarded to S.P.O.H. for
N/A action pl.
INCIDENTAL MEDICAL OFFICER
CIVIL HOSPITAL
BARIKOT SWAT
25/09/2012

C-1
B.P.

[Signature]

[Signature]

OFFICE OF THE
EXECUTIVE DISTRICT OFFICER
(HEALTH) SWAT AT GULKADA.
NO. 8972-73/PF
Dated 25/10/2012.

210
7

TO:

The Director General Health
Services Khyber Pakhtun Kwa Peshawar.

Subject:-
Memo:-

ARRIVAL REPORT

I have the honour to submit herewith arrival report in respect of
DR. Muhammad Sherin SMO (BPS-19) who has reported for duty at Civil Hospital
Barikot, Swat on 25.9.2012 after his prolong absence.

Submitted for information and further necessary action.


EXECUTIVE DISTRICT OFFICER
(HEALTH) SWAT AT GULKADA.

NO.

Copy of the above is forwarded to Medical Officer I/C, CH Barikot
for information with ref: to his letter No. 58/A, dated 25/9/2012.

EXECUTIVE DISTRICT OFFICER
(HEALTH) SWAT AT GULKADA.

~~ATTACHED~~

E-20(A) 2012



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the February 14, 2013

NOTIFICATION

NO.SOH(EV)2-341/2007

The Competent Authority is pleased to designate Mr. Ahmad Khan (PCS SG BS-20), Managing Director, Elementary Education Foundation, Peshawar as Enquiry officer to conduct a fact finding enquiry and to investigate into the matter regarding "absent from duty w.e.f 21/02/2009" in respect of Dr. Muhammad Sherin, P.M.O (BS-19).

2. The Enquiry Officer is requested to scrutinize the record and submit findings/recommendations to this department within stipulated period, for further proceedings under the Govt. Servants (Efficiency & Discipline) Rules-2011.

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

Endst. No. & Date even.

Copy to:-

- (1) The Director General, Health Services, Peshawar, with copy of Charge Sheet/Statement of Allegation with the request to serve the charge sheet upon the accused and also with the direction to appear before the enquiry officer, on the date, time and venue fixed by the Enquiry Officer for the purpose of the enquiry proceedings. Moreover a departmental representative alongwith relevant record may be detailed to assist the enquiry officer.
- (2) Mr. Ahmad Khan (PCS SG BS-20), Managing Director, Elementary Education Foundation, Peshawar with copy each of the charge sheet and statement of allegation of the accused officer for ready reference.
3. Section Officer (E-I), Establishment Department.
4. PS to Secretary Health.

ATTESTED

SECTION OFFICER (E-V)

15/09 2020 16:13 FAX

D 9

@001'



Elementary
Education
Foundation

1111-1122 Street No.13, New Shami Road,
Peshawar, Khyber Pakhtunkhwa, Pakistan.
Tel: 091-9212295, 091-2396
Fax: 091-9212296
E-mail: info@eeffoundation.org
Date: 21-02-2013
Dr. M. Sherin

5763-6

To

Dr. Muhammad Sherin,
P.M.O. (BS-19)
C/O
Secretary Health Department
Peshawar.

1481
20/2/13

Subject: Inquiry against Dr. Muhammad Sherin for willful absence from duty.

The Govt. of Khyber Pakhtunkhwa vide notification No.SOH(BV)2-611/2007, dated 14th February, 2013 has initiated an inquiry against you for the following charges:

"You were found willful absent from your duty w.e.f. 21-02-2009 without any information"

You are therefore advised to submit your written defense to the undersigned within 7 days, so as to proceed further in matter

(Signature)
(Ahmad Khan) 2/20/13
Managing Director
Elementary Education Foundation
Govt. of Khyber Pakhtunkhwa

C.c.

- Director General Health Services, Peshawar with reference to notification No.SOH(BV)2-341/2007, dated 14th February, 2013. He is requested to please nominate a representative of the Department to assist the undersigned and also direct the accused officer to submit his written defense immediately.

(Handwritten notes and signatures)

(Signature)
(Ahmad Khan)
Managing Director
Elementary Education Foundation
Govt. of Khyber Pakhtunkhwa

ATTESTED

(Signature)

E (10)

Managing Director,
Elementary Education Foundation
Peshawar. (Inquiry officer)

4/3/2013.

Subject: Reply to the explanation / Inquiry

Sir,

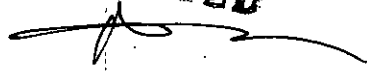
In reference to the explanation called for vide your letter No. 5763, dated 21/2/2013, I have the honour to state that when I was posted as Senior Medical Officer in the Civil Hospital Barikot Swat, I assumed the charge on 21st February, 2009.

In the mean while army operation was started in Malakand territory particularly in Swat District and the inhabitants were forced to shift to safe areas in down Districts of Mardan, Peshawar, Swabi and Charsadda. Resultantly the government functionaries were compelled to stop their activities including district administration, schooling and health facilities at all levels. The administrative heads of all such institutions left their place of postings in worry and with the fear of any mishap.

Here I am further to say that during my entire service career of 23 years, I fully observed the decorum and discipline and my service record on this account is unblemished. I have never given a chance of indiscipline, ever worked whole heartedly and to the entire satisfaction of my superiors.

However, it may be further added that due to our family clashes and enmity on account of land dispute in my home town (Bajaur), I was mentally disturbed and as such under an agreement decided by the Jirga elders, both the parties, i.e. I, along with my family members as well as members of rival party were debarred/expelled from the home town. I also repeatedly received life threats and under the circumstances I was not in a position to show my location which is the main reason of my absence. The situation continued till end of August, 2012. The Jirga documents/deeds are attached for perusal.

ATTESTED

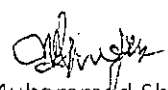


11

By the grace of almighty Allah, my family problems and disputes were settled in September 2012 and I accordingly resumed my duties at Civil Hospital Barikot District Swat on 25/9/2012 and yet I am performing my duties regularly.

For the absence compelled under the circumstances as explained above from 21/2/2009 till 24/09/2012, I request that the said period may kindly be considered favorably and converted into leave with pay. For this time I may also kindly be excused and exonerated of the charge, however, I shall be careful in future. I shall be grateful for this act of kindness.

Yours Obediently,



(Dr. Muhammad Sherin)

Senior Medical Officer (BPS-19)

Civil Hospital Barikot Swat.

Dated: 01/03/2013

ATTESTED



F
12

Ahmad Khan sb.
MD Elementary
1 Demolition (Inquiry) office
WPK Peshawar

Subject: Submission of documents relating inquiry.

Memo:
In continuation of Letter No. EF/ND/IND/2013
Sherin

dated 21st/2/2013, I am to submit the defensive
documents relating to my inquiry for consideration.
As the charges levelled against me are not
based with the facts and are baseless,
it is further added for your kind
consideration that I am regularly performing
my duties since 25 September 2012.

End: 3

with regards

Date: 04. 4. 2013

DR. Muhammad Sherin
S.M.C C-4 Barikot
Swat - BPS 19

Dr. 28/4
msil

2714
116
05/4/13

05/4/2013

ATTESTED

45
13
DUTY / PERFORMANCE CERTIFICATE

It is to certify that

DR. Muhammad Sherin SMO, BPS - 19

is performing his duties in C. H.

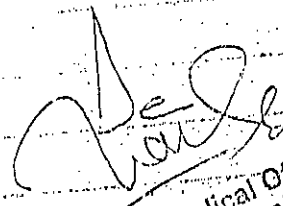
Barikot, Swat since 25 September 2012

regularly. ^(according to duty Rota) Moreover as he is qualified

Skin specialist so a lot skin patients

benefit from his speciality services.

Dated 03.4.2013



I/C Medical Officer
Civil Hospital
Barikot Swat

ATTACHED

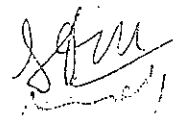
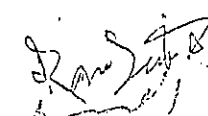
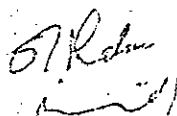

2 جون 2009

فریق اول ڈاکٹر عزیز حسین خان صاحب

فریق دوم، فریق ثالث، درہ عالی، شہر اترکھٹا

منازقہ ماہی پورہ

مجموعہ گھمسان دونوں فریقوں کے درمیان و متنازعہ زمینوں
 عم نے حاکمیت کی بات کرنا شروع کی مگر قیاد کو منظور نہ کیا گیا
 جم گھمسان دونوں فریقوں کو گاؤں سے باہر نکل کر تپے سے لے کر
 تپے سے لے کر گاؤں میں آئے جہاں جم گھمسان کو اس وقت تک
 حاکمیت نہ مل سکے، دونوں فریقوں نے درہ عالی کے پاس جا کر
 زمین کے کاشت پر کوئی پابندی نہیں ہوگی۔ بشمول متنازعہ زمینوں
 اور ان کے = (1) حریدہ فریقوں کے اپنے اپنے خزانہ زمین کاشت کر کے
 اس وقت انہی زمین کے منتقل جم گھمسان کے معیار انہی کے پاس رہنا چاہیے
 اس وقت کے قیادت پر گھمسان کو لارہ ملے گا باقی زمینوں کو اس وقت تک
 رقم نہیں دی جائے گا = (2) حریدہ والوں نے دونوں فریقوں کو اپنے گاؤں سے
 کہ دونوں فریقوں کے موجودگی کی وجہ سے خزانہ زمین کاشت کر کے
 منتقل ہے۔ کہ دونوں اس وقت تک باہر نہیں جائیں گے۔ جب تک کہ وہ اپنے
 زمینوں کی وجہ سے فریقوں کے درمیان کوئی جھگڑا نہ ہوگا اور یہ فریقوں کے پاس

Mian Sajid
 Chairman
 Bajaur Agency.

ATTESTED

2012

فیصلہ

فریق اول ڈاکٹر فریقین

فریق دوم فریقین

مجموعہ نمبر ان کے فریق اول اور فریق دوم کو گاؤں جی باجوڑ کے
سے داخل گاتھی۔ ایکلے نم فریقین آپس میں کھیلے۔ اور
فریقین کے ایک دوسرے کو قتل کرے۔

مادہ ۱۱۱۱ اور ۱۱۱۲ کے تحت فریقین کے درمیان جو تنازعہ
فریقین کے درمیان ہے اس کا تنازعہ باقی نہیں رہے۔ کھڈا ہم جٹ والے
فریقین کو واپس گاؤں میں آئے گا اور اجازت دیتے ہیں۔ اگر کھڈا
کے درمیان سے باہر ہوا ہے۔ تو کھڈا ہے۔ دراصل جٹ کے طور سے
کھڈا کے قتل نہیں ہوئے۔ ان۔ اگر کسی کو فریقین نے قتل کرے گا
اس کو فریقین کو دس لاکھ روپے جرمانہ کیا جائے گا اور ہر ماہ کے دوران کو اجازت
دے گا۔ وہ آپس میں تقسیم کرے گا۔ یا کسی۔ ہر ایک کو دیتے ہیں۔

Handwritten signature and notes on the left side.

Mian Saeed ur Rehman
Chairman IZO Khar
Bajaur Agency.

Handwritten signature below the printed name.

Handwritten signature and notes on the right side.

Handwritten signature and notes on the far right side.

ATTACHED

To,

(17)

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department.

Subject:- APPEAL

Sir,

I have the honour to state that an enquiry regarding absentee from service was initiated against me in March, 2013.

The enquiry officer (Mr. Ahmad Khan) completed the enquiry and sent the enquiry report to the office of Secretary Health Department in April 2013. The summary was then sent to the then caretaker government. Upon contacting the concerned official, it was told to me that the new government will decide your case within two months. But after lapse of more than one year, no action has been taken in the matter.

My pay has been stopped since March, 2009, which is a long punishment to a undersigned. Due to very much delay in deciding my case, long mental torture has been given to me.

It is, therefore, humbly requested that my case may kindly be decided, and either equated the charges leveled against me, or the recommendations of the enquiry officer may be implemented and also punishment may be given to the concerned official responsible for delaying my case for such a long period.

Thanking you in anticipation.

Yours faithfully,

(DR. MUHAMMAD SHERIN)
SMO(BPS-19), Civil Hospital Barikot
Swat.

June - 2014

A copy of the above is forwarded to:-

1. The Minister Health, Khyber Pakhtunkhwa, Peshawar, with the request that the concerned officers may be directed to decide my case immediately, and my salary may be released which has been stopped since 2009.
2. Incharge Chief Minister's Complaint Cell, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar, for similar necessary action.

(DR. MUHAMMAD SHERIN)
SMO(BPS-19), Civil Hospital Barikot
Swat.

RECEIVED

H (18)

SHOW CAUSE NOTICE.

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Dr Muhammad Sherin Principal Medical Officer (BS-19) CH Bari Kot Swat as follows:

1. (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer/enquiry committee for which you were given opportunity of hearing.
- (ii) On going through the findings and recommendations of the enquiry officer/enquiry committee, the material on record and other connected papers including your defence before the said enquiry officer/enquiry committee:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3 of the said rules.

- (a). Misconduct
- (b) Guilty of habitually absenting himself from duty without prior approval of leave.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Reduction to lower grade under Rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

5. A copy of the findings of the enquiry officer/enquiry committee is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister, Khyber Pakhtunkhwa.

26.07.2014.

ATTESTED

[Signature]

To

The Section Officer (H-V),
Government of Khyber Pukhtunkhwa,
Health Department.

Subject: **SHOW-CAUSE NOTICE**

With profound regards it is submitted that in the year 2009, a major operation was launched by the Pak Army against the terrorists in the whole region of Swat Valley. Like other Government machineries, the hospitals were also totally closed due to the evacuation of the whole population from the operation hit areas.

2. As has explained already to the Enquiry Officer, serious life threats for me and my family were faced therefore, I also shifted to my native village at Bajaur Agency. However, there in the village suddenly in the mean time some family disputes suddenly erupted due to which I was forcibly ejected from the village as per "Jirga" decision. All the relevant documents have already been provided to the Enquiry Officer. On resolution of the issues due to Jirga proceedings, I immediately resumed the duties in 2012 and since then I am regularly performing my duties whole-heartedly and with full devotion.

3. It is further extremely pertinent to mention here that my wife is seriously suffering from Psychiatric disease "**Schizophrenia**" for the last more than 09 years which is yet another cause of my family worsened situation as she needs regular care and treatment (**necessary documents of her medical record is attached with the application**).

4. Moreover, I have not committed any misconduct and am bound to abide by Government Rules and Regulations. The absence from duty was due to the cogent reasons mentioned above. It is further to add that since the very first day of my service no warning, no show-cause and even no explanation has been served upon me by any authority.

ATTESTED

5. In view of the position explained above, it is requested that the charges leveled against me, may kindly be withdrawn and the desired penalty being very serious and major one, may kindly be reconsidered as it will badly affect my service career, seniority position and further chance of my progression and resultantly I will face an irrecoverable service and financial loss. I assure that I will perform my duties with full dedication and will not give any opportunity of complaint to my superior authorities.

6. Above all I would also like to be heard in person.

7. I hope and expect that due consideration will be given to my submission and my requests will be accepted sympathetically for which I shall remain extremely thankful to your good honour, please.

(All relevant documents are herewith attached with the application)

Enclsd: As Above

o/c

Shayr 25.8.14

(DR. MUHAMMAD SHERIN)
Principal Medical Officer (BS-19)
Civil Hospital barrikot, Swat

Copy to:

Secretary to Government of Khyber Pukhtunkhwa, Health Department for information and necessary action.

o/c

Shayr 25.8.14

(DR. MUHAMMAD SHERIN)

*Personal Hearing -
@ Secret Establishment -
16-11-2014*

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 11th December, 2014

NOTIFICATION

NO.SOH(E-V)2-341/2014 WHEREAS Dr. Muhammad Sherin PMO (BS-19), Health Department was proceeded under Khyber Pakhtunkhwa Govt Servants (Efficiency and Discipline) Rules, 2011 for the charges of absence from duty with effect from 21.2.2009 to 25.9.2012 without prior approval of the competent authority.

AND WHEREAS the charge of continuous absence from duty after submitting arrival report on 25.9.2012 was proved during the personal hearing against Dr. Muhammad Sherin PMO (BS-19).

AND WHEREAS Show Cause Notice was served upon him for which he replied.

AND WHEREAS an opportunity of personal hearing was provided to the officer concerned under the aforementioned rules.

NOW THEREFORE in exercise of powers conferred under the aforementioned rules, the Competent Authority; after having examined the charges, evidence on record and explanation of the accused officer; is pleased to impose the major penalty of Dismissal from Service

SECRETARY HEALTH
Govt of Khyber Pakhtunkhwa.

Endst. No & Date Even.

Copy to the:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. PSO to Chief Secretary Khyber Pakhtunkhwa
3. Director General Health Services, Peshawar.
4. District Health Officer, Swat.
5. In-charge Civil Hospital Civil Hospital Barikot, Swat.
6. District Accounts Officer, Swat.
7. All Section Officers in Health Department.
8. PS to Minister for Health Khyber Pakhtunkhwa.
9. PS to Secretary Health Department.
10. PS to Secretary Establishment Department.
11. Computer Programmer Health Department.
12. Officer/doctor concerned.

(HINA HAFEEZ)
SECTION OFFICER(E-V)

ATTESTED

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: APPEAL

R/Sir,

With profound regards, it is submitted that the undersigned was served with a Show Cause Notice by the Chief Minister, Khyber Pakhtunkhwa on 24-07-2014 (copy at Annexure-I).

In the said Show Cause Notice, the Chief Minister, Khyber Pakhtunkhwa, being Competent Authority, had tentatively decided to impose the penalty of Reduction to Lower Grade.

I was directed to reply to the Show Cause Notice and was also asked for personal hearing.

In response, the undersigned submitted a written reply on 25-08-2014 through the Health Department (Copy at Annexure - II) and requested for personal hearing.

On 14-10-2014, I was telephonically informed about personal hearing with Secretary Establishment Department and was personally heard in person on 16-10-2014.

On 15-01-2014, I received a notification bearing No. SOH(E-V)2341/2014 endorsed by the Section Officer (E-V), Health Department regarding dismissal from service (copy at Annexure - III).

Keeping in view, the background as elaborated above, I humbly submit the following few points:-

i.T The Show Cause Notice as initially issued by the Chief Minister, Khyber Pakhtunkhwa, with his own signature, being competent authority, with a tentative decision of imposition of the penalty Reduction to Lower Grade, and was given an option of personal hearing BUT the requisite personal hearing was done by the Secretary Establishment and not the Chief Minister, Khyber Pakhtunkhwa (Competent Authority).

ii.T In the Show Cause Notice, the tentative penalty was Reduction to Lower Grade, BUT in the Notification as referred to in Annexure -III, the proposed penalty was totally changed to the major penalty of Dismissal from Service.

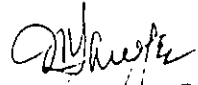
ATTACHED


In view of the above, I humbly requested through this appeal that:-

- i. The Notification as referred to Annexure-III, may kindly be withdrawn.
- ii. The Tentative penalty as per Show Cause Notice at Annexure-I may not be changed, as the change at such belated stage is not in line with spirit of justice.
- iii. I may kindly be provided an opportunity of personal hearing with the Chief Minister, Khyber Pakhtunkhwa, being Competent Authority, as is evident from the Show Cause Notice, referred to as Annexure-I.

Yours faithfully,

Dated 12.01.2015


(DR. MUHAMMAD SHERIN)
Ex-Principal Medical Officer (BS-19)
Civil Hospital Barrikot, Swat.

ATTESTED




GOVERNMENT OF KHYBER PAKHTUNKHWA
RIGHT TO INFORMATION COMMISSION
7th Floor, Tasneem Plaza, Near Benevolent Fund Building,
6th Saddar Road, Peshawar
Email: complaints@kprti.gov.pk
Ph: 92-91-9212643
Fax: 92-91-9211163

LS
24

No: RTIC/AR/1-995/15 / 6/108
Dated: 09th Sep., 2015

To

The Chief Secretary/PIO,
Office of the Chief Secretary,
Peshawar.

Ref:

MUHAMMAD SHERIN VS. CHIEF SECRETARY, PESHAWAR

Subject:

**COMPLAINT AGAINST NON-SUPPLY OF INFORMATION BY CHIEF SECRETARY,
PESHAWAR (COMPLAINT NO: 00995)**

Memo:

Complainant Mr. Muhammad Sherin had filed a request with your Department dated: 07/08/2015. You have failed to respond to the request within the timeline fixed by the Right to Information Act, 2013, and hence he has approached this Commission with the subject complaint under the Law. (copy attached)

2. You are directed to provide complete and relevant information to the complainant within **ten** working days of the receipt of this letter, under intimation to RTI Commission.
3. In case, you need any clarification/guidance in the matter, you are required to contact this Commission within **five** working days of the receipt of this letter on phone No. 091-9212643, e-mail: complaints@kprti.gov.pk or fax No. 091-9211163, so that the provision of information within fifteen working days is ensured.
4. In case the information is not supplied, you are directed to attend this Commission on 01/10/2015 to give reasons for the failure on your part.
5. Failure to comply with the above would compel this Commission to make resort to the punitive clauses of the Law.

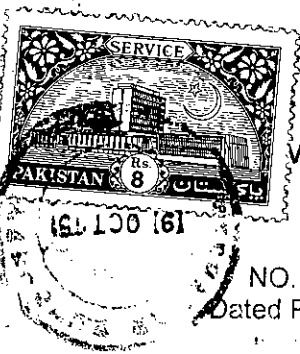
Copy to:

1. Mr. Muhammad Sherin (Complainant)

Assistant Registrar
Right to Information Commission,
KPK, Peshawar.

ATTESTED

Assistant Registrar
Right to Information Commission,
KPK, Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

NO. SOH(E-V)2-341/2007/Dr.Muhammad Sherin
Dated Peshawar the 30th September, 2015

Dispatched
Khyber Pakhtunkhwa
Health Department

To

Dr.Muhammad Sherin
House # 22 Street No.2 Sector F-10,
Phase-VI, Hayatabad Peshawar.

Subject: **COMPLAINT AGAINST NON SUPPLY OF INFORMATION BY CHIEF SECRETARY PESHAWAR (COMPLAINT NO.00995).**

I am directed to refer to the subject noted above and to state that reply to your appeal have already been communicated to you on your place of posting Civil Hospital Barikot, Swat vide this Department letter of even number dated 30.4.2015. You have also obtained the same copy in person from Health Department. However, attested copy of the same is again enclosed as desired.

(MUHAMMAD ARSHAD)
SECTION OFFICER-V

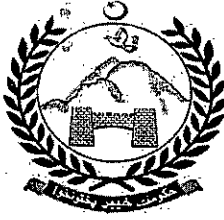
Endst No & Date Even.

Copy to the:-

1. Deputy Secretary-II Health Department w/r to his letter No.DS-II/HD/1-30/RTI Act/2015 dated 18.9.2015.
2. Assistant Registrar Right Information Commission 7th Floor Tasneem Plaza near Benevolent Fund Building Sadr Road, Peshawar.
3. Section Officer (HRD-II) Establishment Department w/r to his letter No.SO(HRD-II)/ED/1-10/2014(RTI)Muhammad Sherin dated 16.9.2015.
4. PS to Secretary Health Department.

SECTION OFFICER-V

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NO. SOH(E-V)2-341/2009/Dr Muhammad Sherin
Dated Peshawar the 30th April, 2015

N
26

To

Muhammad Sherin
u-s-o

Dr. Muhammad Sherin Ex-PMO (BS-19)
Civil Hospital Barikot, Swat.

Subject:

APPEAL AGAINST DISMISSAL FROM SERVICE.

I am directed to refer to the subject noted above and to state that your appeal for reinstatement into service was placed before the competent authority for consideration under Rule-17 of the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011. The competent authority regretted your appeal and kept intact your penalty.

[Signature]
(HINA HAFEEZ)
SECTION OFFICER-V

Endst No & Date Even.

Copy to the :-

1. District Health Officer, Swat.
2. In-Charge Civil Hospital Barikot, Swat.
3. PS to Secretary Health Department.

[Signature]
SECTION OFFICER-V

Attested

[Signature]
ATTESTED
Section Officer (EV)
Health Department
Khyber Pakhtunkhwa

27

بعدالت سرسٹریٹ پیسول کپشاور

کورٹ فیس

مورخہ: 20²⁰ منجانب ایس ایف یوسف زئی

مقدمہ: سر سٹریٹ پیسول ڈاکٹر شہد شہزاد خان بنام: خولہ بنت مریم

دعویٰ: ایسٹ

جرم: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کپشاور سے Mr. Asif Yousefzai + Taimur Ali Achakzai مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخ دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداشتہ منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا

Shahid
Taimur
Ali
Achakzai
D.P. Nubur
Mansoor
Rizvi

اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20²⁰

العواہ شہادہ العواہ

بمقام:

Asif Yousefzai
Advocate
High Court Peshawar
Room No FR-8, Fourth Floor
Bijapur Plaza Peshawar, Saddar
Cell: 0333-9102466

منظور

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1212/2015

Dr. Muhammad Sherin.....**Appellant**

Versus

- 1. Govt of Khyber Pakhtunkhwa through Secretary Health.
- 2. Director General Health Services Khyber Pakhtunkhwa... **Respondents**

Written comments on behalf of Respondent No. 4 and 5

PRELIMINARY OBJECTIONS.

- 1. That the appellant has neither cause of action nor locus standi.
- 2. That the appeal is not maintainable in its present form.
- 3. That the appellant has not come to the Tribunal with clean hands.
- 4. That the appeal is bade due to non-joinder and mis-joinder of un- necessary party.
- 5. That the appeal is time barred.


FACTS.

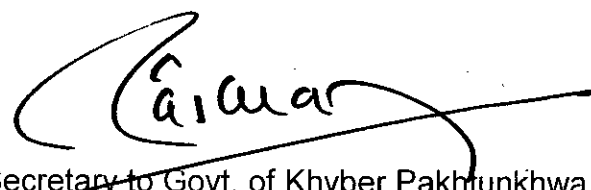
- 1. Correct to the extent that the appellant was regular employee of the Provincial Health Department.
- 2. Correct to the extent that the appellant was transferred to Civil Hospital Barikot Swat but the appellant was absent from duty without prior approval of the competent authority since 21.2.2009 to 25.9.2009.
- 3. Correct to the extent that the appellant has submitted arrival report on 25.9.2012 but remain absent from duty till that date.
- 4. Incorrect. Appellant were issued and served charge sheet and statement of allegations and a formal inquiry was conducted. The inquiry officer after fulfilling all codal formalities, proved the appellant to have committed the illegal act of misconduct(Copy of charge sheet, statement of allegation and inquiry report are **(Annex-A,B,C)**).
- 5. Incorrect.
- 6. Correct to the extent that the appellant was served upon a show cause notice.
- 7. Pertain to record. However, competent authorities not bound to the recommendations of inquiry officer. However, he was proved to have committed willful absent himself
- 8. Incorrect. The impugned order was communicated on his available residential address.
- 9. Replies on the grounds are as under:-


GROUNDS.

- A. Incorrect. The appellant was absented from duty without prior approval of The competent authority and Health Department have initiated proper disciplinary proceedings against the appellant. The impugned orders are in accordance with law
- B. Incorrect. All the codel formalities were fulfilled by the competent authority including personal hearing
- C. Incorrect. The Chief Minister Khyber Pakhtunkhwa has nominated Mr.Ahmad Managing Director Elementary Education Foundation and the inquiry officer has recommended that the appellant is willfully absent from duty with effect from 21.2.2009 to 25.9.2012.
- D Correct to the extent that penalty of reduction to lower grade was imposed upon the appellant in the show cause notice. However, the competent authority has imposed penalty of dismissal from service upon the appellant.
- E. Incorrect. As mentioned in Para-C above.
- F. Incorrect. The appellant has willfully absent from duty without prior approval of the competent authority for more than 5 years while charge was established during formal inquiry.
- G. Incorrect. The appellant has been properly treated under the law and Rules.
- H. Incorrect. The competent authority has modify the tentative penalty of Reduction to lower grade and ward him the major penalty of Dismissal from service under the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline rules 2011 17(c).
- I. Incorrect. The impugned order are in accordance with law.
- J. Respondents also seek permission to submit further grounds during arguments.

It is therefore, prayed that the appeal of the appellant may kindly be dismissed with cost.


 Secretary to Govt. of Khyber Pakhtunkhwa
 Establishment Department
 (Respondent No.3)


 Secretary to Govt. of Khyber Pakhtunkhwa
 Health Department
 (Respondent No.4)
 2012


 Director General
 Health Services
 Khyber Pakhtunkhwa
 (Respondent No.5) 20/9/10

Inquiry against Dr. Muhammad Sherin PMO (BS-19)

An inquiry has been initiated against Dr. Muhammad Sherin PMO (BS-19) on account of the following charges;

“He was found willfully absent from his duty w.e.f. 21-02-2009 without any information / intimation.”

2. The charge sheet and statement of allegations against the accused officer duly signed by the Chief Minister Khyber Pakhtunkhwa (Annexure I and II respectively) have been received by the undersigned (inquiry officer) vide Health Department, Govt. of Khyber Pakhtunkhwa, Notification No.SOH(EV) 341/2007, dated 14-02-2013 (Annexure-III). Dr. Muhammad Sherin was advised vide letter No.EEF/MD/Inq-Dr.M.Sherin/5763-64, dated 21-02-2013 to submit his written defense within seven days (Annexure-IV).

3. The Health Department vide above cited notification No.SOH(EV) 341/2007, dated 14th February, 2013 had designated the undersigned as inquiry officer to conduct a fact finding enquiry regarding absence from duty w.e.f. 21-02-2009” in respect of Dr.Muhammad Sherin, P.M.O (BS-19). The undersigned had been tasked to scrutinize the record and submit findings/recommendations to Health Department within stipulated period, for further proceedings under the Govt. Servants (Efficiency and Discipline) Rules 2011.

4. On the other hand the charge sheet and statement of allegations received with the above cited notification and duly signed by the Chief Minister of Khyber Pakhtunkhwa, against Dr. Muhammad Sherin P.M.O (BS-19) reveals that Dr. Muhammad Sherin P.M.O (BS-19) is being proceeded against under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011. The Chief

Minister Khyber Pakhtunkhwa has directed the undersigned to recommend punishment or other appropriate action against the accused officer.

5. There is as such contradiction as to whether a preliminary inquiry be held or a proper inquiry under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011 be conducted against Dr.Muhammad Sherin P.M.O (BS-19). An early clarification in this regard was sought from the Health Department vide letter No.EEF/MD/Inq-Dr.M.Sherin/5775-76, dated 25-02-2013 (Annexure-V). The Director General Health Services Peshawar was also requested vide above cited letter to direct the departmental representative to provide all relevant record about absence of Dr.M.Sherin so that the inquiry is finalized within the stipulated time.

6. The Health Department clarified vide letter No.SOH(E-V)2-34/Dr.Sherin dated 27-03-2013 (Annexure-VI) that a formal inquiry be conducted against Dr.Muhammad Sherin P.M.O (BS-19) instead of fact finding inquiry.

7. Dr. Muhammad Sherin P.M.O. (BS-19) submitted his written defense on 4th March, 2013 (Annexure-VII) acceding to which he could not perform duty at the place of posting i.e. Civil Hospital Bari Kot due to military operation in Swat and family dispute in his native village in Bajor Agency. Since his life was under threat so he could not disclose his residential location which led to absence from duty. He further revealed that he has assumed duty on 25-09-2012 and since then performing his duty regularly.

8. The Director General Health Service Khyber Pakhtunkhwa submitted its reply though Mr.Abdul Rehman DDA (Departmental Representative) (Annexure-VIII) on 29-03-2013, which reveals that Dr. Muhammad Sherin (Accused officer) is absent from 21-02-2009. On the other hand the accused officer submitted photo copies of the attendance register for the month of March 2013 and April 2013 (upto 3rd April) (Annexure-IX)

Handwritten signature
11/04/2013

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according to which he is performing duty in civil hospital Bari Kot. He also submitted a hand written report signed by Incharge Medical Officer Civil Hospital, Bari Kot according to which Dr. Muhammad Sherin P.M.O. (BS-19) is performing his duties in Civil Hospital Bari Kot, since 25th September, 2012 but neither the attendance register nor the report of Incharge Medical Officer Civil Hospital Bari Kot is signed / countersigned by the Medical Superintendent Civil Hospital Bari Kot. It is also bearing no file and date hence its authentication is doubtful.

Findings

9. In view of the above, it is concluded that Dr. Muhammad Sherin remained absent from duty w.e.f. 21-02-2009. The charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) in thus proved.

Recommendation

10. Since the charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) stand proved, it is recommended that major penalty of reduction to lower post of Senior Medical Officer (BS-18) be imposed upon Dr. Muhammad Sherin P.M.O (BS-19).

Ahmad Khan
(Ahmad Khan)

Managing Director

Elementary Education Foundation

Govt. of Khyber Pakhtunkhwa /

(Inquiry Officer)

(B) 41

DISCIPLINARY ACTION

i, Amir Haider Khan Hoti Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that you, Dr. Muhammad Sherin, P.M.O (BS-19), has rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

STATEMENT OF ALLEGATIONS

"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the purpose of inquiry against the said accused with reference to the above allegations, an enquiry officer/inquiry committee, consisting of the following is constituted under rule 10(1) (a) of the rules (ibid).

- i. Mr. Ahmad Khan (P.S.S.G BS-20)
- ii. _____

3. The enquiry officer/committee shall, in accordance with the provisions of the rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 30 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry Officer/inquiry committee.


(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa

Dr. Muhammad Sherin,
P.M.O (BS-19),

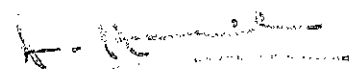
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CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister Khyber Pakhtunkhwa as competent authority, hereby charge you, Dr. Muhammad Sherin, P.M.O (BS-19) as follows:-

"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the above reasons you appear to be guilty of "willful absence" under Rule-9 of the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to the major penalty of removal from service under the said rules as mentioned above.
3. You are therefore required to submit your written defense within 7 days of the receipt of this Charge Sheet to the enquiry officer/committee as the case may be.
4. Your written defense, if any, should reach the enquiry officer/ inquiry committee within the specified period. Failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate as to whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa

Dr. Muhammad Sherin,
P.M.O (BS-19)

SHOW CAUSE NOTICE.

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Dr Muhammad Sherin Principal Medical Officer (BS-19) CH Bari Kot Swat as follows:

1. (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer/enquiry committee for which you were given opportunity of hearing.
- (ii) On going through the findings and recommendations of the enquiry officer/enquiry committee, the material on record and other connected papers including your defence before the said enquiry officer/enquiry committee:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3 of the said rules.

- (a) Misconduct
- (b) Guilty of habitually absenting himself from duty without prior approval of leave.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Reduction to lower grade under Rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

5. A copy of the findings of the enquiry officer/enquiry committee is enclosed.

Pervez Khattak
 (Pervez Khattak)
 Chief Minister, Khyber Pakhtunkhwa.
24. 12. 2011

Dr Muhammad Sherin
Principal Medical Officer

No. 2805
Date 25/8/14
Secretary Health

To
The Section Officer (H-V),
Government of Khyber-Pukhtunkhwa,
Health Department

Subject: SHOW-CAUSE NOTICE

With profound regards it is submitted that in the year 2009, a major operation was launched by the Pak Army against the terrorists in the whole region of Swat Valley. Like other Government machineries, the hospitals were also totally closed due to the evacuation of the whole population from the operation hit areas.

2. As has explained already to the Enquiry Officer, serious life threats for me and my family were faced therefore, I also shifted to my native village at Bajaur Agency. However, there in the village suddenly in the mean time some family disputes suddenly erupted due to which I was forcibly ejected from the village as per "Jirga" decision. All the relevant documents have already been provided to the Enquiry Officer. On resolution of the issues due to Jirga proceedings, I immediately resumed the duties in 2012 and since then I am regularly performing my duties whole-heartedly and with full devotion.

3. It is further extremely pertinent to mention here that my wife is seriously suffering from Psychiatric disease "Schizophrenia" for the last more than 09 years which is yet another cause of my family worsened situation as she needs regular care and treatment (necessary documents of her medical record is attached with the application).

4. Moreover, I have not committed any misconduct and am bound to abide by Government Rules and Regulations. The absence from duty was due to the cogent reasons mentioned above. It is further to add that since the very first day of my service no warning, no show-cause and even no explanation has been served upon me by any authority.

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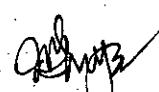
5. In view of the position explained above, it is requested that the charges leveled against me, may kindly be withdrawn and the desired penalty being very serious and major one, may kindly be reconsidered as it will badly affect my service career, seniority position and further chance of my progression and resultantly I will face an irrecoverable service and financial loss. I assure that I will perform my duties with full dedication and will not give any opportunity of complaint to my superior authorities.

6. Above all I would also like to be heard in person.

7. I hope and expect that due consideration will be given to my submission and my requests will be accepted sympathetically for which I shall remain extremely thankful to your good honour, please.

(All relevant documents are herewith attached with the application)

Enclsd: As Above

 25.8.14
(DR. MUHAMMAD SHERIN)
Principal Medical Officer (BS-19)
Civil Hospital barrikot, Swat

Copy to:

Secretary to Government of Khyber Pukhtunkhwa, Health Department for information and necessary action.


(DR. MUHAMMAD SHERIN)

25.8.14

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1212/2015

Dr. Muhammad Sherin

VS

Health Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct. Hence no comments.
- 2 First portion of para 2 is admitted correct, hence no comments, while the rest of para is incorrect as the appellant was not deliberately absent from his duty but he was to remain absent from his duty as due to military operation and enmity with one Khushal Jan on land property and the appellant was expelled with his family from the village by the Jegra Members and due to that reasons the appellant could not reported his arrival at Civil Hospital Barikot, Swat.
- 3 First portion of para 3 of the appeal is admitted correct, hence no comments, while the rest of para 3 of appeal is not replied accordingly. Moreover rest of para 3 of the appeal is correct.
- 4 Incorrect. While para 4 of the appeal is correct.

- 5 Incorrect. Hence denied.
- 6 Admitted correct by the respondents. Hence no comments.
- 7 Incorrect. The competent authority shall give reasons in writing for not agree with the recommendation of inquiry and for enhancement of punishment.
- 8 Incorrect. While para 8 of the appeal is correct.
- 9 No comments.

GROUNDS:

- A. Incorrect. While para A of the appeal is correct.
- B. Incorrect. All codal formalities were not fulfilled by the competent authority as no chance of personal hearing was provided to the appellent by the competent authority.
- C. Incorrect. While para C of the appeal is correct.
- D. First portion of para D of the appeal is correct while the rest is incorrect hence denied as the competent authority did not issue any notice enhancement of the punishment to the appellent before giving major penalty of dismissal from service.
- E. Incorrect. While para E of the appeal is correct.
- F. Incorrect. the appellent was not willfully remain absent, but to compelling situation he was unable to perform his duty which was also explained with proof to the fact finding inquiry by the appellent, but despite that harsh view has been taken without considering more than 25 years of service at his credit.
- G. Incorrect. The appellent was not treated according to law and rules and whole action was taken on

fact finding inquiry which is not permissible by the law.

H. Incorrect. While para H of the appeal is correct.

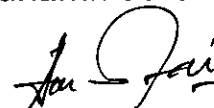
I. Incorrect. While para I of the appeal is correct.

J. Legal.

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

APPELLANT
Dr. Muhammad Shiren

Through:


(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATE PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of appeal and rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1212/2015

Dr. Muhammad Sherin.....**Appellant**

Versus

- 1. Govt of Khyber Pakhtunkhwa through Secretary Health.
- 2. Director General Health Services Khyber Pakhtunkhwa... **Respondents**

Written comments on behalf of Respondent No. 4 and 5

PRELIMINARY OBJECTIONS.

- 1. That the appellant has neither cause of action nor locus standi.
- 2. That the appeal is not maintainable in its present form.
- 3. That the appellant has not come to the Tribunal with clean hands.
- 4. That the appeal is bade due to non-joinder and mis-joinder of un-necessary party.
- 5. That the appeal is time barred.


FACTS.

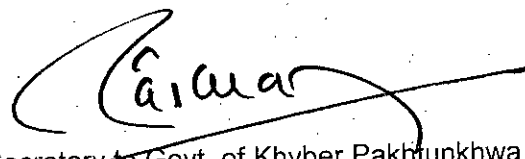
- 1. Correct to the extent that the appellant was regular employee of the Provincial Health Department.
- 2. Correct to the extent that the appellant was transferred to Civil Hospital Barikot Swat but the appellant was absent from duty without prior approval of the competent authority since 21.2.2009 to 25.9.2009.
- 3. Correct to the extent that the appellant has submitted arrival report on 25.9.2012 but remain absent from duty till that date.
- 4. Incorrect. Appellant were issued and served charge sheet and statement of allegations and a formal inquiry was conducted. The inquiry officer after fulfilling all codal formalities, proved the appellant to have committed the illegal act of misconduct(Copy of charge sheet, statement of allegation and inquiry report are **(Annex-A,B,C)**).
- 5. Incorrect.
- 6. Correct to the extent that the appellant was served upon a show cause notice.
- 7. Pertain to record. However, competent authorities not bound to the recommendations of inquiry officer. However, he was proved to have committed willful absent himself
- 8. Incorrect. The impugned order was communicated on his available residential address.
- 9. Replies on the grounds are as under:-


GRUNDS.

- A. Incorrect. The appellant was absented from duty without prior approval of The competent authority and Health Department have initiated proper disciplinary proceedings against the appellant. The impugned orders are in accordance with law
- B. Incorrect. All the codel formalities were fulfilled by the competent authority including personal hearing
- C. Incorrect. The Chief Minister Khyber Pakhtunkhwa has nominated Mr.Ahmad Managing Director Elementary Education Foundation and the inquiry officer has recommended that the appellant is willfully absent from duty with effect from 21.2.2009 to 25.9.2012.
- D. Correct to the extent that penalty of reduction to lower grade was imposed upon the appellant in the show cause notice. However, the competent authority has imposed penalty of dismissal from service upon the appellant.
- E. Incorrect. As mentioned in Para-C above.
- F. Incorrect. The appellant has willfully absent from duty without prior approval of the competent authority for more than 5 years while charge was established during formal inquiry.
- G. Incorrect. The appellant has been properly treated under the law and Rules.
- H. Incorrect. The competent authority has modify the tentative penalty of Reduction to lower grade and ward him the major penalty of Dismissal from service under the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline rules 2011 17(c).
- I. Incorrect. The impugned order are in accordance with law.
- J. Respondents also seek permission to submit further grounds during arguments.

It is therefore, prayed that the appeal of the appellant may kindly be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department
(Respondent No.3)


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Respondent No.4)
122


Director General
Health Services
Khyber Pakhtunkhwa
(Respondent No.5) 09/04/16

Inquiry against Dr. Muhammad Sherin PMO (BS-19)

An inquiry has been initiated against Dr. Muhammad Sherin PMO (BS-19) on account of the following charges;

“He was found willfully absent from his duty w.e.f. 21-02-2009 with any information / intimation.”

2. The charge sheet and statement of allegations against the accused officer duly signed by the Chief Minister Khyber Pakhtunkhwa (Annexure-I and II respectively) have been received by the undersigned (inquiry officer) Health Department, Govt. of Khyber Pakhtunkhwa, Notification No.SOH(EV) 341/2007, dated 14-02-2013 (Annexure-III). Dr. Muhammad Sherin was advised vide letter No.EEF/MD/Inq-Dr.M.Sherin/5763-64, dated 21-02-2009 to submit his written defense within seven days (Annexure-IV).

3. The Health Department vide above cited notification No.SOH(EV) 341/2007, dated 14th February, 2013 had designated the undersigned inquiry officer to conduct a fact finding enquiry regarding absence from duty w.e.f. 21-02-2009” in respect of Dr.Muhammad Sherin, P.M.O (BS-19). The undersigned had been tasked to scrutinize the record and submit findings/recommendations to Health Department within stipulated period. Further proceedings under the Govt. Servants (Efficiency and Discipline) Rules 2011.

4. On the other hand the charge sheet and statement of allegations received with the above cited notification and duly signed by the Chief Minister of Khyber Pakhtunkhwa, against Dr. Muhammad Sherin P.M.O (BS-19) reveals that Dr. Muhammad Sherin P.M.O (BS-19) is being proceeded against under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011. The C

Minister Khyber Pakhtunkhwa has directed the undersigned to recommend punishment or other appropriate action against the accused officer.

5. There is as such contradiction as to whether a preliminary inquiry be held or a proper inquiry under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011 be conducted against Dr.Muhammad Sherin P.M.O (BS-19). An early clarification in this regard was sought from the Health Department vide letter No.EEF/MD/Inq-Dr.M.Sherin/5775-76, dated 25-02-2013 (Annexure-V). The Director General Health Services Peshawar was also requested vide above cited letter to direct the departmental representative to provide all relevant record about absence of Dr.M.Sherin so that the inquiry is finalized within the stipulated time.

6. The Health Department clarified vide letter No.SOH(E-V)2-34/Dr.Sherin dated 27-03-2013 (Annexure-VI) that a formal inquiry be conducted against Dr.Muhammad Sherin P.M.O (BS-19) instead of fact finding inquiry.

7. Dr. Muhammad Sherin P.M.O. (BS-19) submitted his written defense on 4th March, 2013 (Annexure-VII) acceding to which he could not perform duty at the place of posting i.e. Civil Hospital Bari Kot due to military operation in Swat and family dispute in his native village in Bajor Agency. Since his life was under threat so he could not disclose his residential location which led to absence from duty. He further revealed that he has assumed duty on 25-09-2012 and since then performing his duty regularly.

8. The Director General Health Service Khyber Pakhtunkhwa submitted its reply through Mr.Abdul Rehman DDA (Departmental Representative) (Annexure-VIII) on 29-03-2013, which reveals that Dr. Muhammad Sherin (Accused officer) is absent from 21-02-2009. On the other hand the accused officer submitted photo copies of the attendance register for the month of March 2013 and April 2013 (upto 3rd April) (Annexure-IX)

Ahmad Khan
11/04/2013

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according to which he is performing duty in civil hospital Bari Kot. He also submitted a hand written report signed by Incharge Medical Officer Civil Hospital, Bari Kot according to which Dr. Muhammad Sherin P.M.O. (BS-19) is performing his duties in Civil Hospital Bari Kot, since 25th September, 2012 but neither the attendance register nor the report of Incharge Medical Officer Civil Hospital Bari Kot is signed / countersigned by the Medical Superintendent Civil Hospital Bari Kot. It is also bearing no file and date hence its authentication is doubtful.

Findings

9. In view of the above, it is concluded that Dr. Muhammad Sherin remained absent from duty w.e.f. 21-02-2009. The charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) in thus proved.

Recommendation

10. Since the charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) stand proved, it is recommended that major penalty of reduction to lower post of Senior Medical Officer (BS-18) be imposed upon Dr. Muhammad Sherin P.M.O (BS-19).

Ahmad Khan
(Ahmad Khan)
Managing Director
Elementary Education Foundation
Govt. of Khyber Pakhtunkhwa /
(Inquiry Officer)

41

DISCIPLINARY ACTION

i, Amir Haider Khan Hoti Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that you, Dr. Muhammad Sherin, P.M.O (BS-19), has rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

STATEMENT OF ALLEGATIONS

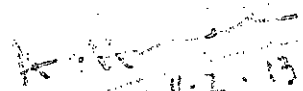
"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the purpose of inquiry against the said accused with reference to the above allegations, an enquiry officer/inquiry committee, consisting of the following is constituted under rule 10(1) (a) of the rules (ibid).

- i. Mr - Ahmad Khan (P.C.S.S.G BS-20)
- ii. _____

3. The enquiry officer/committee shall, in accordance with the provisions of the rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 30 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry Officer/inquiry committee.


(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa

Dr. Muhammad Sherin,
P.M.O (BS-19),

A

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister Khyber Pakhtunkhwa as competent authority, hereby charge you, Dr. Muhammad Sherin, P.M.O (BS-19) as follows:-

"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the above reasons you appear to be guilty of "willful absence" under Rule-9 of the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to the major penalty of removal from service under the said rules as mentioned above.
3. You are therefore required to submit your written defense within 7 days of the receipt of this Charge Sheet to the enquiry officer/committee as the case may be.
4. Your written defense, if any, should reach the enquiry officer/ inquiry committee within the specified period. Failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate as to whether you desire to be heard in person.
6. A statement of allegations is enclosed.

(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa

Dr. Muhammad Sherin,
P.M.O (BS-19)

SHOW CAUSE NOTICE.

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Dr Muhammad Sherin Principal Medical Officer (BS-19) CH Bari Kot Swat as follows:

1. (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer/enquiry committee for which you were given opportunity of hearing.
- (ii) On going through the findings and recommendations of the enquiry officer/enquiry committee, the material on record and other connected papers including your defence before the said enquiry officer/enquiry committee:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3 of the said rules.

- (a) Misconduct
- (b) Guilty of habitually absenting himself from duty without prior approval of leave.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Reduction to lower grade under Rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

5. A copy of the findings of the enquiry officer/enquiry committee is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister, Khyber Pakhtunkhwa.

Dr Muhammad Sherin
Principal Medical Officer

No. 2805
Date 22.8.14
Secretary Health.

To

The Section Officer (H-V),
Government of Khyber Pukhtunkhwa,
Health Department

Subject: SHOW-CAUSE NOTICE

With profound regards it is submitted that in the year 2009, a major operation was launched by the Pak Army against the terrorists in the whole region of Swat Valley. Like other Government machineries, the hospitals were also totally closed due to the evacuation of the whole population from the operation hit areas.

2. As has explained already to the Enquiry Officer, serious life threats for me and my family were faced therefore, I also shifted to my native village at Bajaur Agency. However, there in the village suddenly in the mean time some family disputes suddenly erupted due to which I was forcibly ejected from the village as per "Jirga" decision. All the relevant documents have already been provided to the Enquiry Officer. On resolution of the issues due to Jirga proceedings, I immediately resumed the duties in 2012 and since then I am regularly performing my duties whole-heartedly and with full devotion.

3. It is further extremely pertinent to mention here that my wife is seriously suffering from Psychiatric disease "Schizophrenia" for the last more than 09 years which is yet another cause of my family worsened situation as she needs regular care and treatment (necessary documents of her medical record is attached with the application).

4. Moreover, I have not committed any misconduct and am bound to abide by Government Rules and Regulations. The absence from duty was due to the cogent reasons mentioned above. It is further to add that since the very first day of my service no warning, no show-cause and even no explanation has been served upon me by any authority.

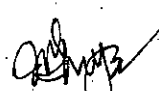
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5. In view of the position explained above, it is requested that the charges leveled against me, may kindly be withdrawn and the desired penalty being very serious and major one, may kindly be reconsidered as it will badly affect my service career, seniority position and further chance of my progression and resultantly I will face an irrecoverable service and financial loss. I assure that I will perform my duties with full dedication and will not give any opportunity of complaint to my superior authorities.

6. Above all I would also like to be heard in person.

7. I hope and expect that due consideration will be given to my submission and my requests will be accepted sympathetically for which I shall remain extremely thankful to your good honour, please.

(All relevant documents are herewith attached with the application)

Enclsd: As Above


(DR. MUHAMMAD SHERIN)
Principal Medical Officer (BS-19)
Civil Hospital barrikot, Swat

25-8-14

Copy to:
Secretary to Government of Khyber Pukhtunkhwa, Health Department for
information and necessary action.


(DR. MUHAMMAD SHERIN)

25-8-14

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1212/2015

Dr. Muhammad Sherin

VS

Health Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct. Hence no comments.
- 2 First portion of para 2 is admitted correct, hence no comments, while the rest of para is incorrect as the appellant was not deliberately absent from his duty but he was to remain absent from his duty as due to military operation and enmity with one Khushal Jan on land property and the appellant was expelled with his family from the village by the Jegra Members and due to that reasons the appellant could not reported his arrival at Civil Hospital Barikot, Swat.
- 3 First portion of para 3 of the appeal is admitted correct, hence no comments, while the rest of para 3 of appeal is not replied accordingly. Moreover rest of para 3 of the appeal is correct.
- 4 Incorrect. While para 4 of the appeal is correct.

- 5 Incorrect. Hence denied.
- 6 Admitted correct by the respondents. Hence no comments.
- 7 Incorrect. The competent authority shall give reasons in writing for not agree with the recommendation of inquiry and for enhancement of punishment.
- 8 Incorrect. While para 8 of the appeal is correct.
- 9 No comments.

GROUND:

- A. Incorrect. While para A of the appeal is correct.
- B. Incorrect. All codal formalities were not fulfilled by the competent authority as no chance of personal hearing was provided to the appellant by the competent authority.
- C. Incorrect. While para C of the appeal is correct.
- D. First portion of para D of the appeal is correct while the rest is incorrect hence denied as the competent authority did not issue any notice enhancement of the punishment to the appellant before giving major penalty of dismissal from service.
- E. Incorrect. While para E of the appeal is correct.
- F. Incorrect. the appellant was not willfully remain absent, but to compelling situation he was unable to perform his duty which was also explained with proof to the fact finding inquiry by the appellant, but despite that harsh view has been taken without considering more than 25 years of service at his credit.
- G. Incorrect. The appellant was not treated according to law and rules and whole action was taken on

fact finding inquiry which is not permissible by the law.

H. Incorrect. While para H of the appeal is correct.


I. Incorrect. While para I of the appeal is correct.

J. Legal.

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

APPELLANT
Dr. Muhammad Shiren

Through:


(M. ASIF YOUSAFZAI)

&

(TAIMUR ALI KHAN)
ADVOCATE PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of appeal and rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 979 /2013.

Dr. Muzaffar Iqbal, Ex- Senior Registrar

DHQ Teaching Hospital D.I.Khan.....



E.W.P. Peshawar
852
29/4/13

.....Appellant.

VERSUS

- 1- The Chief Secretary KPK Peshawar.
- 2- The Secretary Health Deptt; KPK Peshawar.
- 3- The D.G health Services KPK Peshawar.
- ④ The M.SDHQ Hospital D.I.Khan..... Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 READ WITH RULE-19 OF THE KPK E&D RULES 2011 AGAINST THE ORDER DATED 21.12.2012 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST NOT TAKING ANY ACTION ON THE APPEAL OF APPELLANT WITHIN STATUTORY PERIOD.

PRAYER:

*That on acceptance of this appeal the order dated. 21.12.2012 may be set-aside and the appellant may be re-instated with all back benefits **OR** the penalty of removal may be converted into compulsory retirement being having 23 years service at his credit. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.*

re-submitted to ~~the~~
and filed.

18/6/13

*Referent No. 9
Pended ex-parte
Vide order dt
11-9-14
Rend.*

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

29/4/13



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1.	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 979/2013

Dr. Muzaffar Iqbal Versus the Chief Secretary Khyber Pakhtunkhwa, Peshawar etc.

ORDER

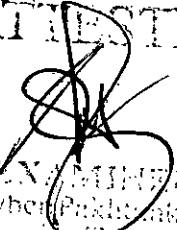
29.06.2015

PIR BAKHSH SHAH, MEMBER.- Counsel for the appellant (Mr. Muhammad Asif Yousafzai, Advocate) and Addl. Advocate General (Mr. Muhammad Adeel Butt) with Qibaz Khan, S.O for the respondents present. Arguments heard.

2. This appeal has been filed by appellant Dr. Muzaffar Iqbal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 21.12.2012 whereby he has been removed from service on the allegations of willful absence from duty.

3. It was not disputed that the appellant has rendered 23 years service and as during the course of arguments it was resolved that this Tribunal is competent and may convert major penalty of removal from service into compulsory retirement. [Reference was made to 2007-PLC (C.S)678 and 2007 PLC (C.S) 685], in which circumstances, without going into merits of the case, the penalty imposed is therefore, converted into compulsory retirement of the appellant. The appeal is disposed

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

off accordingly. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED
29.6.2015.

*Sd/- Pir Bakht Shah,
Member*

*Sd/- Abdul Latif,
Member*

Certified to be true copy
[Signature]
EXCISE & REVENUE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 29-11-16
Number of Words 1200
Copying Fee 80
Rent 20
Total 100
Name of Copyist SMO
Date of Completion of Copy 29-11-16
Date of Delivery of Copy 29-11-16

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2036 /ST

Dated 5 / 12 / 2016

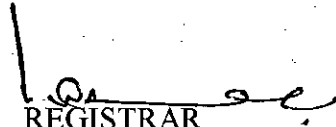
To

The Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 29.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. _____/ST

Dated _____/2016

To,

1. The District Police Officer,
Peshawar.
2. The District Police Officer,
Mardan.
3. The District Police Officer,
Charsadda.
4. The District Police Officer,
Swabi.
5. The District Police Officer,
Malakand.
6. The District Police Officer,
Swat.
7. The District Police Officer,
Dir Upper.
8. The District Police Officer,
Dir Lower.
9. The District Police Officer,
Chitral.
10. The District Police Officer,
Haripur.
11. The District Police Officer,
Abbottabad.
12. The District Police Officer,
Maneshra.
13. The District Police Officer,
Batagram.
14. The District Police Officer,
Kohistan.
15. The District Police Officer,
Torghar.
16. The District Police Officer,
Kohat.
17. The District Police Officer,
Karak.
18. The District Police Officer,
Bannu.
19. The District Police Officer,
Tank.
20. The District Police Officer,
Hangu.
21. The District Police Officer,
Lakki Marwat.
22. The District Police Officer,
D.I.Khan.
23. The District Police Officer,
Nowshera.

Subject:- APPEAL NO. [REDACTED] RIFFAT ALI VS POLICE DEPARTMENT.

Sir,

I am directed to forward herewith a certified copy of judgement dated 25.8.2016 passed by this Tribunal in the subject appeal for compliance and further necessary report thereof may also be sent to this Tribunal for perusal of Hon'ble Chairman.


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Encl: As above

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1212/2015

Dr. Muhammad Sherin.....Appellant

Versus

1. Govt of Khyber Pakhtunkhwa through Secretary Health.
2. Director General Health Services Khyber Pakhtunkhwa... Respondents

Written comments on behalf of Respondent No.1,4 and 5

PRELIMINARY OBJECTIONS.

1. That the appellant has neither cause of action nor locus standi.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to the Tribunal with clean hands.
4. That the appeal is bade due to non-joinder and mis-joinder of un- necessary party.
5. That the appeal is time barred.

FACTS.

1. Correct to the extent that the appellant was regular employee of the Provincial Health Department.
2. Correct to the extent that the appellant was transferred to Civil Hospital Barikot Swat but the appellant was absent from duty without prior approval of the competent authority since 21.2.2009 to 25.9.2009.
3. Correct to the extent that the appellant has submitted arrival report on 25.9.2012 but remain absent from duty till that date.
4. Incorrect. Appellant were issued and served charge sheet and statement of allegations and a formal inquiry was conducted. The inquiry officer after fulfilling all codal formalities, proved the appellant to have committed the illegal act of misconduct(Copy of charge sheet, statement of allegation and inquiry report are **(Annex-A,B,C)**).
5. Incorrect.
6. Correct to the extent that the appellant was served upon a show cause notice.
7. Pertain to record. However, competent authorities not bound to the recommendations of inquiry officer. However, he was proved to have committed willful absent himself
8. Incorrect. The impugned order was communicated on his available residential address.
9. Replies on the grounds are as under:-

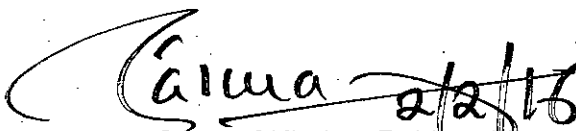
GROUNDS.

- A. Incorrect. The appellant was absented from duty without prior approval of The competent authority and Health Department have initiated proper disciplinary proceedings against the appellant. The impugned orders are in accordance with law
- B. Incorrect. All the codel formalities were fulfilled by the competent authority including personal hearing
- C. Incorrect. The Chief Minister Khyber Pakhtunkhwa has nominated Mr. Ahmad Managing Director Elementary Education Foundation and the inquiry officer has recommended that the appellant is willfully absent from duty with effect from 21.2.2009 to 25.9.2012.
- D. Correct to the extent that penalty of reduction to lower grade was imposed upon the appellant in the show cause notice. However, the competent authority has imposed penalty of dismissal from service upon the appellant.
- E. Incorrect. As mentioned in Para-C above.
- F. Incorrect. The appellant has willfully absent from duty without prior approval of the competent authority for more than 5 years while charge was established during formal inquiry.
- G. Incorrect. The appellant has been properly treated under the law and Rules.
- H. Incorrect. The competent authority has modify the tentative penalty of Reduction to lower grade and ward him the major penalty of Dismissal from service under the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline rules 2011 17(c).
- I. Incorrect. The impugned order are in accordance with law.
- J. Respondents also seek permission to submit further grounds during arguments.

It is therefore, prayed that the appeal of the appellant may kindly be dismissed with cost.



Director General
Health Services
Khyber Pakhtunkhwa
(Respondent No.2)



Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Respondent No.1)



Inquiry against Dr. Muhammad Sherin PMO (BS-19)

An inquiry has been initiated against Dr. Muhammad Sherin PMO (BS-19) on account of the following charges;

“He was found willfully absent from his duty w.e.f. 21-02-2009 without any information / intimation.”

2. The charge sheet and statement of allegations against the accused officer duly signed by the Chief Minister Khyber Pakhtunkhwa (Annexure-I and II respectively) have been received by the undersigned (inquiry officer) vide Health Department, Govt. of Khyber Pakhtunkhwa, Notification No.SOH(EV)2-341/2007, dated 14-02-2013 (Annexure-III). Dr. Muhammad Sherin was advised vide letter No.EEF/MD/Inq-Dr.M.Sherin/5763-64, dated 21-02-2013 to submit his written defense with in seven days (Annexure-IV).

3. The Health Department vide above cited notification No.SOH(EV)2-341/2007, dated 14th February, 2013 had designated the undersigned as inquiry officer to conduct a fact finding enquiry regarding absence from duty w.e.f. 21-02-2009” in respect of Dr.Muhammad Sherin, P.M.O (BS-19). The undersigned had been tasked to scrutinize the record and submit findings/recommendations to Health Department within stipulated period, for further proceedings under the Govt. Servants (Efficiency and Discipline) Rules-2011.

4. On the other hand the charge sheet and statement of allegation received with the above cited notification and duly signed by the Chief Minister of Khyber Pakhtunkhwa, against Dr. Muhammad Sherin P.M.O (BS-19) reveals that Dr. Muhammad Sherin P.M.O (BS-19) is being proceeded against under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011. The Chief

Handwritten signature and date:
11/04/2013.

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Minister Khyber Pakhtunkhwa has directed the undersigned to recommend punishment or other appropriate action against the accused officer.

5. There is as such contradiction as to whether a preliminary inquiry be held or a proper inquiry under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011 be conducted against Dr. Muhammad Sherin P.M.O (BS-19). An early clarification in this regard was sought from the Health Department vide letter No.EEF/MD/Inq-Dr.M.Sherin/5775-76, dated 25-02-2013 (Annexure-V). The Director General Health Services Peshawar was also requested vide above cited letter to direct the departmental representative to provide all relevant record about absence of Dr.M.Sherin so that the inquiry is finalized within the stipulated time.
6. The Health Department clarified vide letter No.SOH(E-V)2-34/Dr.Sherin dated 27-03-2013 (Annexure-VI) that a formal inquiry be conducted against Dr. Muhammad Sherin P.M.O (BS-19) instead of fact finding inquiry.
7. Dr. Muhammad Sherin P.M.O. (BS-19) submitted his written defense on 4th March, 2013 (Annexure-VII) acceding to which he could not perform duty at the place of posting i.e. Civil Hospital Bari Kot due to military operation in Swat and family dispute in his native village in Bajor Agency. Since his life was under threat so he could not disclose his residential location which led to absence from duty. He further revealed that he has assumed duty on 25-09-2012 and since then performing his duty regularly.
8. The Director General Health Service Khyber Pakhtunkhwa submitted its reply through Mr. Abdul Rehman DDA (Departmental Representative) (Annexure-VIII) on 29-03-2013, which reveals that Dr. Muhammad Sherin (Accused officer) is absent from 21-02-2009. On the other hand the accused officer submitted photo copies of the attendance register for the month of March 2013 and April 2013 (upto 3rd April) (Annexure-IX)

Abdul Rehman DDA
11/04/2013

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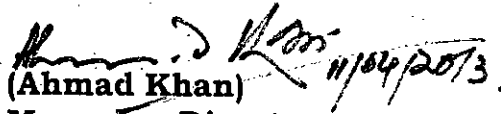
✓ according to which he is performing duty in civil hospital Bari Kot. He also submitted a hand written report signed by Incharge Medical Officer Civil Hospital, Bari Kot according to which Dr. Muhammad Sherin P.M.O. (BS-19) is performing his duties in Civil Hospital Bari Kot, since 25th September, 2012 but neither the attendance register nor the report of Incharge Medical Officer Civil Hospital Bari Kot is signed / countersigned by the Medical Superintendent Civil Hospital Bari Kot. It is also bearing no file and date hence its authentication is doubtful.

Findings

9. In view of the above, it is concluded that Dr. Muhammad Sherin remained absent from duty w.e.f. 21-02-2009. The charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) in thus proved.

Recommendation

10. Since the charge leveled against Dr. Muhammad Sherin P.M.O (BS-19) stand proved, it is recommended that major penalty of reduction to lower post of Senior Medical Officer (BS-18) be imposed upon Dr. Muhammad Sherin P.M.O (BS-19).


(Ahmad Khan)
Managing Director
Elementary Education Foundation
Govt. of Khyber Pakhtunkhwa /
(Inquiry Officer)

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DISCIPLINARY ACTION

i, Amir Haider Khan Hoti Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that you, Dr. Muhammad Sherin, P.M.O (BS-19), has rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

STATEMENT OF ALLEGATIONS


"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the purpose of inquiry against the said accused with reference to the above allegations, an enquiry officer/inquiry committee, consisting of the following is constituted under rule 10(1) (a) of the rules (**ibid**).

- i. Mr. Ahmad Khan (P.C.S.S.G BS-20)
- ii. _____

3. The enquiry officer/committee shall, in accordance with the provisions of the rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 30 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry Officer/inquiry committee.


(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa
11-2-13

Dr. Muhammad Sherin,
P.M.O (BS-19),

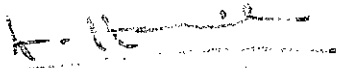
(10)

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister Khyber Pakhtunkhwa as competent authority, hereby charge you, Dr. Muhammad Sherin, P.M.O (BS-19) as follows:-

"You were found willfully absent from your duty w.e.f 21/02/2009 without any information/intimation."

2. For the above reasons you appear to be guilty of "willful absence" under Rule-9 of the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to the major penalty of removal from service under the said rules as mentioned above.
3. You are therefore required to submit your written defense within 7 days of the receipt of this Charge Sheet to the enquiry officer/committee as the case may be.
4. Your written defense, if any, should reach the enquiry officer/ inquiry committee within the specified period. Failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate as to whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Amir Haider Khan Hoti)
Chief Minister, Khyber Pakhtunkhwa

Dr. Muhammad Sherin,
P.M.O (BS-19)

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SHOW CAUSE NOTICE.

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Dr Muhammad Sherin Principal Medical Officer (BS-19) CH Bari Kot Swat as follows:

1. (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer/enquiry committee for which you were given opportunity of hearing.
- (ii) On going through the findings and recommendations of the enquiry officer/enquiry committee, the material on record and other connected papers including your defence before the said enquiry officer/enquiry committee:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3 of the said rules.

- (a) **Misconduct**
- (b) **Guilty of habitually absenting himself from duty without prior approval of leave.**

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Reduction to lower grade under Rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

5. A copy of the findings of the enquiry officer/enquiry committee is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister, Khyber Pakhtunkhwa.

24.07.2014

Dr Muhammad Sherin
Principal Medical Officer

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To

The Section Officer (H-V),
Government of Khyber Pukhtunkhwa,
Health Department.

No. 2805
Date 25.8.14
Secretary Health.

Subject: **SHOW-CAUSE NOTICE**

With profound regards it is submitted that in the year 2009, a major operation was launched by the Pak Army against the terrorists in the whole region of Swat Valley. Like other Government machineries, the hospitals were also totally closed due to the evacuation of the whole population from the operation hit areas.

2. As has explained already to the Enquiry Officer, serious life threats for me and my family were faced therefore, I also shifted to my native village at Bajaur Agency. However, there in the village suddenly in the mean time some family disputes suddenly erupted due to which I was forcibly ejected from the village as per "Jirga" decision. All the relevant documents have already been provided to the Enquiry Officer. On resolution of the issues due to Jirga proceedings, I immediately resumed the duties in 2012 and since then I am regularly performing my duties whole-heartedly and with full devotion.

3. It is further extremely pertinent to mention here that my wife is seriously suffering from Psychiatric disease "**Schizophrenia**" for the last more than 09 years which is yet another cause of my family worsened situation as she needs regular care and treatment (**necessary documents of her medical record is attached with the application**).

4. Moreover, I have not committed any misconduct and am bound to abide by Government Rules and Regulations. The absence from duty was due to the cogent reasons mentioned above. It is further to add that since the very first day of my service no warning, no show-cause and even no explanation has been served upon me by any authority.

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RIN)

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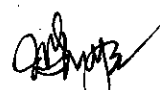
5. In view of the position explained above, it is requested that the charges leveled against me, may kindly be withdrawn and the desired penalty being very serious and major one, may kindly be reconsidered as it will badly affect my service career, seniority position and further chance of my progression and resultantly I will face an irrecoverable service and financial loss. I assure that I will perform my duties with full dedication and will not give any opportunity of complaint to my superior authorities.

6. Above all I would also like to be heard in person.

7. I hope and expect that due consideration will be given to my submission and my requests will be accepted sympathetically for which I shall remain extremely thankful to your good honour, please.

(All relevant documents are herewith attached with the application)

Enclsd: As Above

 25.8.14
(DR. MUHAMMAD SHERIN)
Principal Medical Officer (BS-19)
Civil Hospital barrikot, Swat

Copy to:
Secretary to Government of Khyber Pukhtunkhwa, Health Department for
information and necessary action.


(DR. MUHAMMAD SHERIN)

25.8.14

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

Appeal No. 1212/2015

Dr. Muhammad Sherin

V/S

Govt of KPK etc:

.....

**APPLICATION FOR FIXING OF AN EARLY DATE OF
HEARING IN THE ABOVE APPEAL INSTEAD OF 9.8.2016**

.....

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal against his dismissal from service.
2. That lastly the respondents admitted reply in the instant appeal on 4-4-2016 and the next date was given as 9-8-2016, before this Honourable KPK Service Tribunal for argument.
3. That the appellant has been facing great financial hardships being out of service.
4. That the main issue in the appeal is regarding the dismissal from service of the appellant. The appellant is facing great hardships in shape of unemployment due to which the whole family is suffering a lot.
5. That the appellant has no other remedy but to request the august Tribunal for early hearing and to meet the principal of access to justice.
6. That it will be in interest of justice to fix the case at an early date.

It is, therefore, most humbly prayed that on acceptance of this application, an early date of hearing may kindly be fixed



in the above Service Appeal instead of 9.08.2016 to meet the ends of justice.

Appellant

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.



Deponent