

02.10.2019

Counsel for the appellant present.

Learned counsel for the appellant requests for withdrawal of the instant service appeal.

Disposed of as withdrawn. File be consigned to the record room.

Announced:
02.10.2019



Chairman

06.08.2019

Counsel for the appellant present.

A request for adjournment is made by the learned counsel for further preparation of the brief.

Adjourned to 23.08.2019 before S.B.



Chairman

23.08.2019

Mr. Mirzaman Safi, Advocate for appellant present.

Learned counsel requests for adjournment as learned senior counsel for the appellant is not available today to argue the matter.

Adjourned to 18.09.2019 before S.B.


Chairman

18.09.2019

Mr. Mir Zaman Safi Advocate is present on behalf of learned counsel for the appellant.

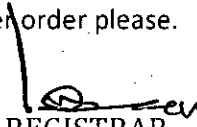


A request for adjournment is made on account of engagement of learned senior counsel for the appellant before the Honourable High Court. Adjourned to 02.10.2019 but as last chance.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 860/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	27/06/2019	<p>The appeal of Mr. Said Muhammad presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 27/6/19</p> <p>2-</p>	10.07.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10/07/19</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant requests for time to further prepare the brief.</p> <p>Adjourned to 06.08.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 860 /2019

SAYED MUHAMMAD

VS

EDUCATION DEPTT:

INDEX

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9.	Vakalat nama	13.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

BEFPRE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 860 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 902

Dated 27-6-2019

Mr. Said Mohammad, Junior Clerk (BPS-11),
presently posted as Head Clerk in the office of District Surgeon,
District North Waziristan at Miran Shah **Appellant**

VERSUS

- 1- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Health Services Merged Area, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Surgeon, District North Waziristan at Miran Shah.
- 4- Mr. Amjad Saleem, Junior Clerk (BPS-11), O/O the District Surgeon, District North Waziristan on Detailment basis presently posted as Head Clerk, O/O District Surgeon, District North Waziristan.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28.2.2019 WHEREBY THE PRIVATE RESPONDENT HAS BEEN ASSIGNED THE CHARGE OF ACCOUNTS CLERK BY RELIEVING THE APPELLANT FROM THE SAID POST PREMATURELY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filed to-day
Registrar
27/6/19

PRAYER:

That on acceptance of this appeal the impugned order dated 28.2.2019 may very kindly be set aside and the respondents may be directed not to transfer/relieve the appellant from the post of Head/Accounts Clerk. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of the respondent Department and is serving as Junior Clerk (BPS-11) in the respondent Department. That right from appointment till date the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

- 2- That recently the appellant was posted as Head/Accounts Clerk in the office of District Surgeon District North Waziristan vide order dated 17.12.2018. That in response the appellant submitted his charge report and started his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the order is attached as annexure **A.**

- 3- That appellant while serving as Junior Clerk/Head Clerk in the o/o respondent No.3 the impugned order dated 28.2.2019 has been issued by the respondent No.2 whereby the private respondent who has recently been re-instated into service on conditional basis has been posted against the post already held by the appellant. Copies of the impugned order and record regarding private respondent are attached as annexure **B and C.**

- 4- That it is also very pertinent to mention that the original place of posting of the private respondent is Type-D Hospital Razmak, District North Waziristan but he is working as Junior Clerk on detailment basis in the office of District Surgeon, District North Waziristan. That inspite of that the private respondent has been posted as head clerk vide impugned order dated 28.2.2019. Copy of the order is attached as annexure **D.**

- 5- That feeling aggrieved the appellant submitted Departmental appeal before the appellate authority but during the pendency of the said Departmental appeal the appellant has been directed vide order 21.5.2019 to hand over the charge of head clerk to private respondent. Copies of Departmental appeal and order dated 21.5.2019 are attached as annexure **E and F.**

- 6- That appellant feeling aggrieved and having no other remedy prefer the present appeal on the following grounds amongst the others.

GROUND:

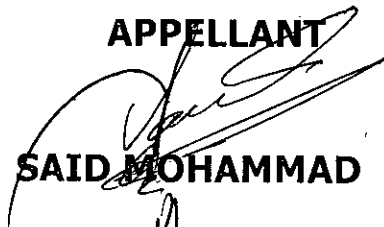
- A- That the impugned orders dated 28.2.2019 and 21.5.2019 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.


- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the impugned order dated 28.2.2019 is against the transfer/posting policy of the Government of Khyber Pakhtunkhwa. Copy of the policy is attached as annexure **G.**
- D- That transfer has not been mentioned in the penalty list of Efficiency and disciplinary Rules 2011, therefore the same can not be awarded as punishment and as such the impugned order is void ab initio in the eye of law.
- E- That the appellant has been transferred by the respondent No.3 pre-maturely and on the basis of political influence, therefore the impugned order dated 21.5.2019 is not tenable in the eye of law and prevailing rules.
- F- That the impugned order dated 28.2.2019 has not been issued by the respondents No.2 in the public interest nor exigencies of service.
- G- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 28.2.2019.
- H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 26.6.2019

APPELLANT

SAID MOHAMMAD

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2019

SYED MUHAMMAD

VS

HEALTH DEPTT:

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED ORDERS DATED 28.2.2019 AND
21.5.2019 TILL THE DISPOSAL OF THIS APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so for.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the impugned transfer orders dated 28.2.2019 and 21.5.2019 are against the transfer/ posting policy of the Government of Khyber Pakhtunkhwa.
- 4- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the orders dated 28.2.2019 and 21.5.2019 may very kindly be suspended till disposal of this appeal.

APPELLANT

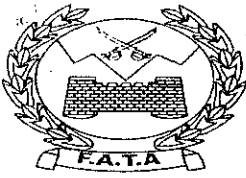

SYED MUHAMMAD

THROUGH:


NOOR MOHAMMAD KHATTAK

&


MUHAMMAD MAAZ MADNI
ADVOCATES



DIRECTORATE HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No _____ /DHS/FATA/Admn Dated: _____

Phone#. 091-9210106

FAX#. 091-9210212

A-5

OFFICE ORDER:-

Mr.Syed Muhammad, Junior clerk, (BPS-11) working under the control of Agency Surgeon, Tribal District, NW is here by assigned the duties of Head Clerk of the office of Agency Surgeon, Tribal District, NW with immediate effect.

Consequently the services of Mr.Asmatullah , Office Assistant deputed on general duty at the office of Agency Surgeon Tribal District NWA and drawing salary from Medical Superintendent DHQ Hospital Miranshah is hereby placed at the disposal of Medical Superintendent DHQ Hospital Wana for further posting.

Director Health Services
Merged Areas, Peshawar

No. 27969-74 /DHS/FATA/Admn, dated 17/12/2018.

Copy forwarded for information to:

1. Agency Surgeon Tribal District, NW
2. Agency Account officer Tribal Districts, NW.
3. Agency Account officer Tribal Districts SW
4. Medical Superintendent DHQ Hospital Wana, Tribal District, SW
5. Medical Superintendent DHQ Hospital Wana, Tribal District, NW
6. Official concern

Kalimullah
Director Health Services
Merged Areas, Peshawar

[Signature]
ATTESTED



DIRECTORATE OF HEALTH SERVICES

B-6

MERGED AREAS WARSAK ROAD PESHAWAR.

No _____ /DHS/FATA/Admn Dated:-

Phone# 091-9210106

FAX# 091-9210212

OFFICE ORDER:

In light of the office order of Agency Surgeon merged Area NW vide No.193-95/transfer /posting dated 21-01-2019 and No.440-44/Posting/Transfer dated 07-02-2019, **Mr.Amjid Saleem**, Junior Clerk attached to Agency Surgeon NW is hereby assigned the duties of Accounts Clerk of the office of Agency Surgeon merged Area North Waziristan , in the interest of public Service with immediate effect.

---SD--

**Director Health Services
Merged Areas, Peshawar**

No. 2412-15 /DHS/Admn/FATA Dated: 28 / 02 /2019
Copy for information and necessary action to:

1. The District Surgeon Merged Area NW.
2. The District Accounts Officer, NW.
3. PA to DHS.
4. The official concerned.

Director Health Services
Merged Areas, Peshawar

28/2/19

ATTESTED



DIRECTORATE HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR

No. 21596-600 /DHS/FATA/Admn

Date: 15/11/2017

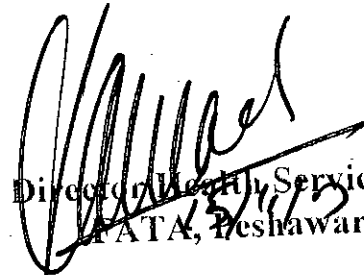
Phone# 091-9210106

FAX# 091-9210212

C-7

OFFICE ORDER:-

On the recommendations of inquiry committee the office order of the office of Agency Surgeon NW Agency bearing No.486-89/Apptt: dated 03-02-2017 pertaining to illegal appointment of Mr.Anjid Saleem as Junior Clerk (BPS-11) in NWA is hereby cancelled with immediate effect.


Director Health Services,
FATA, Peshawar

No. 21596-600 /DHS/FATA/Admn, dated 15/11/2017.
Copy for information and necessary action to the:

- Agency Surgeon NW Agency.
- Agency Account office NW Agency.
- PS to Secretary Social Sector Department FATA
- DHIS Coordinator DHS FATA
- Official concerned.

Director Health Services,
FATA, Peshawar


ATTESTED



DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT, WARSAK ROAD, PESHAWAR.

Phone: 091-9210212

FAX: 091-9212110

8

OFFICE ORDER

In pursuance of court order dated 20.04.2018 of Peshawar High Court Peshawar in Writ Petition No. 4974-P/ 2017-Mr. Amjid Saleem, Junior Clerk VS ACS FATA & others, the cancellation order issued by this Directorate bearing No. 21596-600 / DHS / FATA/Admn dated 15.11.2017 is hereby withdrawn and he is reinstated as Junior Clerk (BPS-11) on conditional basis till the final decision of Supreme Court of Pakistan on CPLA filed against the above order.

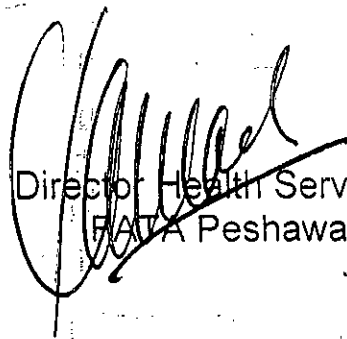
Sd/xxxxx
Director Health Services,
FATA Peshawar


No. 18596-18603 /DHS/FATA/Litigation

Dated: 16 / 07 /2018

Copy for information and necessary action to:

1. Registrar Peshawar High Court Peshawar.
2. Deputy Director (Admn) DHS FATA.
3. Deputy Solicitor, Law Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Coordinator DHIS Program FATA.
5. Agency Surgeon NW Agency.
6. Agency Accounts Officer NWA.
7. Record Keeper, DHS FATA.
8. Official concerned.


Director Health Services,
FATA Peshawar


ATTESTED

W.P. NO.4974-P/2017 FILED BY AMJID SALIM VS ADDITIONAL CHIEF SECRETARY FATA AND OTHERS.

(A/D:- FATA Secretariat)

9


(i) The representative of the Department apprised the Committee about the background of the case. The representative informed the Committee that the petitioner filed the subject writ petition in Peshawar high court Peshawar with the prayer that the cancellation order dated 15-11-2017 of his appointment order may be declared as illegal. The court vide judgment dated accepted the writ petition set aside the impugned order and the petitioner was reinstated in service with all back benefits.

(ii) The grounds as proffered by the representative for filing of CPLA were that the court has not taken into consideration the material facts. The order of the appointment of the petitioner as junior clerk was fake one. The petitioner was employed as Data Manager on fixed pay under ADP programme. The competent authority has not recommended the appointment of the petitioner and the letter produced before the Court was fake one. He further added that proper inquiry was conducted into the appointment of the petitioner and after the recommendation of the inquiry report the appointment of the petitioner was cancelled.

DECISION:-

(iii) After discussion it was decided with consensus by the Scrutiny Committee that the subject case was fit for CPLA in the Supreme Court of Pakistan.


TAHIR IQBAL KHATTAK
DEPUTY SOLICITOR


ATTACHED

BETTER COPY - 19

**OFFICE OF THE DISTRICT SURGEON
TRIBAL DISTRICT NORTH WAZIRISTAN**

OFFICE ORDER.

Mr. Amjad Saleem Junior Clerk attach to Type-D Hospital Razmak and working in the office of the undersigned on detailment basis is hereby directed to report to his original place of duty with immediate effect in the interest of public services to avoid violation of government rules.

N.B:- Compliance report should be submitted to this office for record.

--Sd/---

(Dr. Muhammad Younas)
District Surgeon,
Tribal District North Waziristan

No. 26020/C-1,

Dated Miranshah the 02/01/2013

Copy forwarded to:-



ATTESTED

D - 10

**OFFICE OF THE DISTRICT SURGEON
TRIBAL DISTRICT NORTH WAZIRISTAN**

Tel: (0928) 300788 FAX: (0928) 311662

Email: agency.surgeon.mn2013@gmail.com

OFFICE ORDER.

Mr. Anjad Saleem Junior Clerk attach to Type-D Hospital Razmak and working in the office of the undersigned on detailment basis is hereby directed to report to his original place of duty with immediate effect in the interest of public services to avoid violation of government rules.

N.B:- Compliance report should be submitted to this office for record.

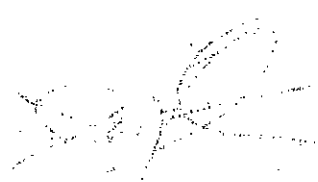
---Sd---


(Dr. Muhammad Younas)
District Surgeon,
Tribal District North Waziristan

No. 26-25 /C-1, Dated Miranshah the 2 /01/2013

Copy forwarded to:-

1. The Director Health Services, Merged Areas Warsak Road Peshawar.
2. The District Accounts Officer Tribal District North Waziristan.
3. The SMO incharge Type-D Hospital Razmak.
4. The official concerned.


District Surgeon,
Tribal District North Waziristan


ATTESTED

محترم جناب سیکرٹری جنرل محکمہ صحت خیبر پختونخواہ پشاور

جناب عالی

E-11

عنوان :- اپیل

موردہ اپیل کیلئے یہ کہ انجمن سلیم نامی فوٹو کلرک جو کہ 2017-2018-03 کو لوگس طریقے سے محکمہ صحت شمالی وزیرستان قبائلی ضلع میں بھرتی ہوا۔ بعد میں ڈائریکٹریٹ سلیکشن سروسز قبائلی اضلاع پشاور نے انکو آئری فوٹو کلرک کے انکو آئری رپورٹ آنے اور لوگس قرار دینے کے بعد فوٹو کلرک سے برخواستہ کر دیا گیا۔ درخواستگی کی آرڈر منسلک ہے - As Annexure - A

ذکورہ کلرک نے اپنے درخواستگی کے خلاف پشاور ناٹمی ٹورٹ میں درخواست جمع کرائی۔ اور عدالت نے اسے ریٹیف دیا۔ لیکن ڈائریکٹریٹ سلیکشن سروسز قبائلی اضلاع نے انکو محکمہ لوگس بحال کرنے کی کارروائی سے انکو آئری سلیکشن سروسز قبائلی پاکستان میں محکمہ قانون کی وسالت سے پہلے کر دیا۔ جس اب بھی سلیکشن سروسز اف پاکستان ڈی پی سی ایس ایف شمالی وزیرستان میں Adjust کیا گیا ہے۔

جناب والا شان سے مخفی نہ رہے۔ کہ ایجنسی سرمن قبائلی ضلع شمالی وزیرستان نے مذکورہ کلرک کو Detachment basis پر اکاؤنٹ لگا کر مع برصلا کروا دیا۔ حالانکہ ایسی فوٹو کلرک کے لئے صرف منتخبہ ایجنسی کے ہی زیر دست میں۔ اور عدالت کے بنیادوں پر تعیناتی کے سفر ہو سکتا ہے۔ درخواست ہے۔ Detachment (متعلقہ آرڈر اور ٹرانسفر لو سٹیک پالیسی کی خلاف ورزی ہے۔

جناب والا! ایجنسی سرمن قبائلی ضلع شمالی وزیرستان نے دوسری مذکورہ کلرک کو دفتر کے ڈیوٹی رول میں ڈال کر دوسری ذمہ داری اسکے لئے سائن کر دیا۔ (ڈیوٹی رول بھی لف ہے)۔ جو کہ ٹرانسفر لو سٹیک پالیسی کی خلاف ورزی ہے۔

جناب والا! میں یہ بتانا چاہوں کہ مذکورہ کلرک کیلئے تمام قواعد و ضوابط کو عدالت کے پاس دیکھ کر صرف آف اوٹسٹ مقرر کیا۔ بلکہ جو دروازے سے یہ کلرک کا خارج فرود، سے دینے کی بھی کو شیش کی باری ہے۔

ATTESTED

No. 2057 /PF,

Dated, 27/5/2019

To
Mr. Syed Muhammad Junior Clerk.

F-12

Subject: HANDING OVER OFFICIAL RECORD.

Memo:

Reference this office letter No.193-95/Transfer/posting dated 21-01-2019 & letter No.440-44/Transfer/Posting dated 07-02-2019. As you know that the responsibility of account clerk is assigned to Mr. Amjad Saleem by Director Health Services Merged Areas vide his office order No.2412-15/DHS/Admn/FATA, dated 28-02-2019. You are directed to hand over complete accounts related record to account clerk i.e Acutance roll, cheque books , cash books and various bank drafts of firms for the year 2013 to 2018 as the concerned company is demanded again and again within 03 days positively.

Agency Surgeon
North Waziristan Tribal District

No. _____ /

Copy forwarded to Director Health Services Merged Areas Peshawar for information and necessary action please.

Agency Surgeon
North Waziristan Tribal District

ATTESTED

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

No. _____/2019

Sayed Muhammad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Sayed Muhammad

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

Dated. ____/____/2019

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

&

**MIR ZAMAN SAFI
ADVOCATES**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141