

Muhammadullah Assistant/Head clerk vs The Additional Chief Secretary Fata
& others.

Order

02.10.2017

Learned Counsel for the appellant appeared and submitted an application for correction of clerical error in Para 6 of the judgment of this Tribunal passed in Service appeal No. 61/2016.

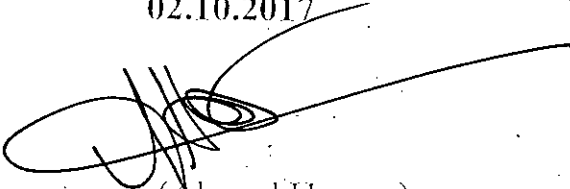
Learned counsel for the appellant submitted that the correct date of the impugned order is 09.10.2015, however due to a clerical error, the same is mentioned as 01.07.2014 in the Para 6 of the judgment.

File perused.

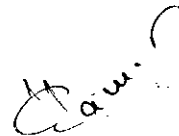
The submission of learned counsel for the appellant appears to be genuine as such the application is allowed and it is directed that the date of impugned order as mentioned in Para-6 of the judgment shall be read as 09.10.2015 instead of 07.01.2014.

ANNOUNCED

02.10.2017



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No: 61/2016

Date of Institution ... 18.01.2016

Date of Decision ... 25.07.2017

Muhammadullah, Office Assistant/Head Clerk,
O/o the Agency Surgeon, Mohmand Agency at Ghallani.

... (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat,
Warsak Road Peshawar and 3 others. ... (Respondents)

MR. KHALED RAHMAN,
Advocate

For appellant.

MR. USMAN GHANI
District Attorney

...

For respondents.

MR. AHMAD HASSAN, ...
MR. MUHAMMAD HAMID MUGHAL ...

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the present appeal has been filed against the impugned order dated 09.10.2015 issued by respondent no.4 whereby appellant was unlawfully relieved from the post of Office Assistant/Head Clerk against which he preferred departmental appeal to respondent no.3 but the same was not disposed of within the statutory period.

ARGUMENTS

3. The learned counsel for the appellant argued that vide order dated 07.01.2014 he was transferred from DHS FATA to Agency Surgeon Mohmand Agency. He was deputed to work as Head Clerk. Respondent no.4 relieved the appellant him with directions to report to DHS FATA vide order dated 09.09.2015. It is clarified that he was not competent to issue this order. Being a BPS.16 official DHS, FATA was the competent authority to issue posting/transfer order. The above order was withdrawn by the respondent no.3 on 10.09.2015. On 09.10.2015 respondent no.4 again relieved the appellant. In order to ascertain the factual position respondent no.ordered an enquiry into the matter and the enquiry officer submitted report in favour of the appellant. It may not be out of place to mention here that on account of irregularities an enquiry is being conducted against Ex-Agency Surgeon, Mohmand Agency Dr. Daud Khan by the NAB.

4. On the other hand District Attorney argued that the appellant was relieved from his duty by respondent no.4 in accordance with invogue rules. When confronted on the point to highlight relevant rules under which the respondent no.4 was competent to relieve the appellant, he was unable to give a plausible explanation. He also stated that the appellant posted on detailment basis but no such thing was mentioned in the transfer order dated 07.01.2014. He was unable to substantiate his argument with record available on file.

CONCLUSION.

5. Having gone through the record it transpired, that competent authority for posting/transfer of appellant was DHS FATA and initial transfer order dated 07.01.2014 was also issued by him. As such order dated 09.09.2015 issued by respondent no.4 was illegal, void ab-initio and without lawful authority. It was also against the established norms of office decorum/discipline and tantamount to mis-

use of official position/authority which falls in the ambit of misconduct. It is quite strange that respondent no.3 showed complacency and did not initiate disciplinary action against respondent no.4. Prima-facie either it was collusion between them or respondent no.4 was more powerful than the prevalent law/rules. Provisions contained in posting/transfer regarding tenure were also violated in this case.

6. In view of the afore-going, the present appeal is accepted and impugned order dated 07.01.2014 is set aside and the appellant shall continue to perform duty in the office of Agency Surgeon till further orders of competent authority in accordance with law. Parties are however, left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER

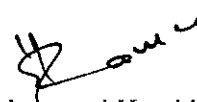


(AHMAD HASSAN)
MEMBER

ANNOUNCED
25.07.2017

20. 07.07.2017 Agent to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.07.2017 before D.B. The restraint order shall continue.

(Gul Zeb Khan)
Member



(Muhammad Hamid Mughal)
Member

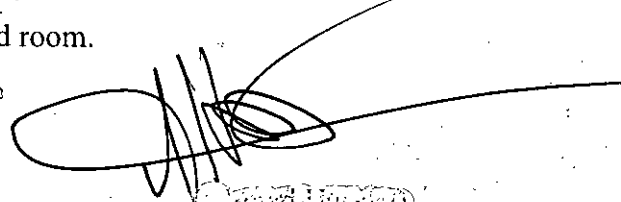
Order

25.07.2017 Learned counsel for the appellant and Mr. Usman Ghani, District Attorney for respondents present.

Vide separate judgment of today of this Tribunal placed on file, the present appeal in hand is accepted and impugned order dated 07.01.2014 is set aside and the appellant shall continue to perform duty in the office of Agency Surgeon. further orders of competent authority in accordance with law. No order as to cost. File be consigned to the record room.

Announced:
25.07.2017
Announced:
25.07.2017


(Muhammad Hamid Mughal)
Member


(Ahmad Hassan)
Member

Announced:
25.07.2017

(Muhammad Hamid Mughal)
Member

(Ahmad Hassan)


Announced:
25.07.2017

(Muhammad Hamid Mughal)
Member


(Ahmad Hassan)

12.05.2017

Clerk to counsel for the appellant and Addl. AG for the respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 15.06.2017 before D.B. The restraint order shall continue.


(Ahmad Hassan)

Member


(Muhammad Amin Khan Kundi)

Member

15.06.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 07.07.2017 before D.B. The restraint order shall continue.


(GUL ZEB KHAN)
MEMBER

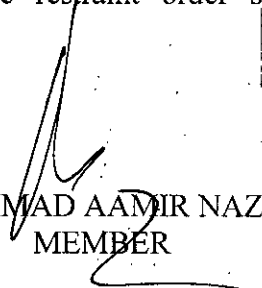

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

08.02.2017

Clerk counsel for appellant and Mr. Yar Gul, Senior Clerk alongwith Mr. Muhammad Jan, GP for respondents present. Clerk counsel for appellant requested for adjournment due to non-availability of learned counsel for appellant today before the Tribunal. Adjourned. To come up for arguments on 08.03.2017 before D.B. The restraint order shall continue.



(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

08.03.2017

Counsel for the appellant and Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 06.04.2017. The restraint order shall continue.



(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

06.04.2017

Counsel for the appellant and Mr. Adeel Butt, Addl: AG, for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 12.5.2017 before D.B.



Chairman

07.11.2016

None present for the appellant. Addl. AG for respondents present. Notices be issued to the appellant and his counsel. To come up for arguments on 5-12-16. The restrain order shall continue.

Noted
(AG)


(PIR BAKISH SHAH)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

05.12.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 9-1-17 before D.B. The restraint order shall continue.


(ASHAFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

09.01.2017

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant is indisposed. Request accepted. To come up for arguments on 08.02.2017. The restrain order shall continue.

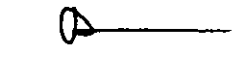

(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

26.07.2016

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted copy of which is handed over to the respondent-department. To come up for arguments on 06.09.2016. The restrain order shall continue.


Member


Member

06.09.2016

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 busy before the Hon'able Peshawar High Court, Peshawar. Adjournment granted. To come up for arguments on 03.10.2016. The restraint order shall continue.


Member


Member

03.10.2016

Since 3rd October, 2016 has been declared as public holiday on account of 1st Muharram therefore, case is adjourned for the same on ~~7-11-16~~


Reader


28.03.2016

Appellant in person and Mr. Maaz Madni, Assistant Litigation Officer alongwith Assistant AG for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 12.5.2016 before S.B.


Chairman

12.05.2016


Appellant in person and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: AG for respondents present. Para-wise comments on behalf of respondents No. 1 to 4 submitted. The appeal may be placed before D.B for rejoinder and final hearing for 13.06.2016. The Chairman may assign the appeal to appropriate D.B. The restraint order shall continue.


Member

13.6.2016

Appellant in person and Mr. Yar Gul, Supdt. alongwith Ziaullah, GP for respondents present. Appellant requested for adjournment. To come up for rejoinder and arguments on 26.7.2016. The restraint order shall continue.


Member


Member

10.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Office Assistant in the Establishment of Agency Surgeon, Mohmand Agency and vide impugned order dated 9.10.2015 he was relieved of his duty and directed to report to Director Health Services FATA for further posting where-against appellant preferred departmental appeal on 9.10.2015 which was not finally decided and hence the instant service appeal on 18.1.2016.


That the Agency Surgeon was not the competent authority for the purpose of posting/transfer of the appellant which powers vest in the Director Health Services FATA and as such the impugned order is void ab-initio.

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 1.3.2016 before S.B. Notice of stay application be also issued for the date fixed. Till then the impugned order is suspended.


Chairman

01.03.2016

Appellant in person and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 28.3.2016 before S.B. The restraint order shall continue.





Chairman

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 61/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18.01.2016	<p>The appeal of Mr. Muhammadullah presented today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>9-2-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	09.02.2016	<p>Mr. Muhammad Asif Yousafzai, Advocate on behalf of counsel for the appellant present. Requested for postponement of the instant case for tomorrow as learned counsel for the appellant is busy before the august Supreme Court of Pakistan. Adjourned to 10.2.2016 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 61 /2016

Muhammadullah.....Appellant

Versus

The Addl: Chief Secretary FATA & others...Respondents

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S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
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4.	First Relieving order of appellant	09.09.2015	B	0-7
5.	Notifications/Rules	03.08.2009 02.02.2015	C	8-10
6.	Cancellation/Withdrawal order of Respondent No.4	10.09.2015	D	0-11
7.	Impugned order	09.10.2015	E	0-12
8.	Departmental Representation	09.10.2015	F	0-13
9.	Letter constituting the Inquiry Committee	13.10.2015	G	0-14
10.	Letter addressed to Investigation Officer NAB	30.10.2015	H	0-15
11.	Transfer /Posting Policy		I	16-20
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Appellant

Through

Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Hardon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: ___/12/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 61/2016

S.W.P. Province
Service Tribunal
Diary No. 45
dated 18-01-2016

Muhammādullah

Office Assistant/Head Clerk,
O/o the Agency Surgeon,

Mohmand Agency at Ghallanai.....*Appellant*

VERSUS

1. **The Additional Chief Secretary FATA,**
FATA Secretariat, Warsak Road, Peshawar.
2. **The Director General**
Health Services, Khyber Pakhtunkhwa
Attached Department Complex,
Khyber Road, Peshawar.
3. **The Director,**
Health Services FATA,
FATA Secretariat, Warsak Road, Peshawar.
4. **The Agency Surgeon,**
Mohmand Agency at Ghallanai.....*Respondents*

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.10.2015 ISSUED BY RESPONDENT NO.4 WHEREBY APPELLANT WAS UNLAWFULLY RELIEVED FROM THE POST OF OFFICE ASSISTANT AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL TO RESPONDENT NO.3 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 09.10.2015 issued by Respondent No.4 may graciously be set aside by allowing the appellant to remain posted as Office Assistant in the office of Respondent No.4.

18/1/16

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant is one of the senior-most employees of the Health Department serving as Office Assistant (BPS-16) in the office of Respondent No.4 (the Agency Surgeon, Mohmand Agency). Appellant has put in more than 30 years service with unblemished and spotless service record.
2. That vide office order dated 07.01.2014 (*Annex:-A*), the competent authority (Respondent No.3) was pleased to transfer the appellant from his office to the office of Respondent No.4 where appellant took over the charge of his duties and has been performing his duties efficiently and to the best of his abilities.
3. That Respondent No.4, on his transfer to the incumbency for malafide reasons vide office order dated 09.09.2015 (*Annex:-B*), relieved the appellant of his duty though having no competence in the case of appellant's post as is evident from the Notifications dated 03.08.2009 and 02.02.2015 (*Annex:-C*). However, the competent authority (Respondent No.3), in view of the fact that Respondent No.4 was not competent and that inquiry by the National Accountability Bureau, Khyber Pakhtunkhwa was in progress where the appellant being a focal person and custodian of the record would be required, hence cancelled/withdrew the office order *ibid* vide office order dated 10.09.2015 (*Annex:-D*).
4. That in order to frustrate the order of the competent authority (Respondent No.3), Respondent No.4 once again in deviation of the rules and in oblivion of his authority/competency, vide impugned office order dated 09.10.2015 (*Annex:-E*) relieved the appellant from the post on the false pretext of having withheld Accounts Record etc. with himself in a quite unceremonial and rude manner resulting into utter heartburning.
5. That since the impugned order *ibid* was violative of the law and rules, therefore, a departmental Representation (*Annex:-F*) was moved to the competent authority (Respondent No.3) on 09.10.2015, who in order to ascertain the actual position appointed an Inquiry Officer i.e.

Deputy Director (Development) DHS FATA vide letter dated 13.10.2015 (*Annex:-G*), who after investigating the issue submitted his report to him in favour of the appellant, however, till date the competent authority has not passed any proper orders in this regard.

6. That appellant also approached the Hon'ble Peshawar High Court, Peshawar for the redressal of his grievance wherein directions were issued for the disposal of the departmental representation of the appellant, but inspite of the same no order was passed and in the meanwhile the statutory period of 90 days has elapsed hence this service appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That Respondent No.4 being Agency Surgeon has got no competence and authority in case of the post of Appellant having BPS-16 for which the competent authority is Respondent No.3 (Director DHS FATA), therefore, the impugned order is void ab initio, without lawful authority and hence of no legal effect.
- C. That it is also pertinent to mention here that an enquiry in the National Accountability Bureau Khyber Pakhtunkhwa is in the progress against the ex-Agency Surgeon, Mohmand Agency namely Dr. Daud Khan who happens to be the uncle of Respondent No.4 and since the appellant is the focal person being custodian of the entire record of the office, therefore, Respondent No.4 is interested in the adjustment of his favorite person in place of the appellant. It is also important to note that inspite of the relieving order, the Respondent No.3 (Director DHS FATA) has endorsed the letter dated 30.10.2015 (*Annex:-H*) addressed to the Investigating Officer National Accountability Bureau, Khyber Pakhtunkhwa.

- D. That the issuance of the impugned order by Respondent No.4 inspite of the direction of the competent authority on the subject matter as explained hereinabove, amounts to an act of utter insubordination on the part of Respondent No.4, which is against the ethics of good governance and also violative of the law and rules and result of highhandedness and abuse of official powers.
- E. That the impugned order is against the directions/instructions given by the Government in respect of the transfer and posting of the civil servants as well as against the Tenure Policy and Judgments of the superior fora on the subject matter hence not sustainable in the eye of law. (Transfer/Posting Policy *Annex:-I*)

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.


Appellant

Through


Khaled Rahman
Advocate.
Supreme Court of Pakistan

Dated: 01/01/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. _____/2016**

Muhammadullah.....Appellant

Versus

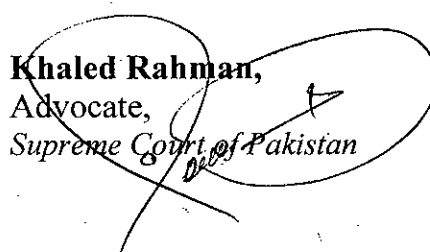
The Addl: Chief Secretary FATA & others.....Respondents

Application for suspending the operation of the impugned order dated 09.10.2015 till the final disposal of the instant appeal.

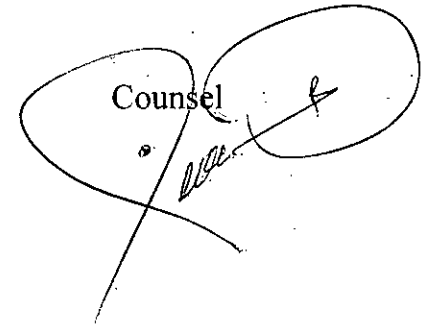
Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of applicant/ appellant.
3. That the balance of convenience also lies in favour of applicant/appellant and in case the impugned order is not suspended the applicant/appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order dated 09.10.2015 may graciously be suspended till the final disposal of the main appeal.


Applicant
Through

Khaled Rahman,
 Advocate,
 Supreme Court of Pakistan
Dated: ____/____/2016Verification

Verified as per the instructions of my client, that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Counsel

DIRECTORATE OF HEALTH SERVICES
FATA SECRETARIAT WAPSAK ROAD PESHAWAR

OFFICE ORDER.

The following posting/transfers of Ministerial staff are hereby ordered with immediate effect in the best interest of public:

S#	Name of Officials	From	To	Remarks
1	Mr. Muhammadullah Office Assistant	DHS FATA	Agency Surgeon Mohmand	He will work as Head Clerk.
2	Mr. Shahjehan Office Asstt.	DHS FATA	Agency Surgeon Khyber	He will work as Head Clerk.
3	Mr. Umer Hayat Office Asstt.	DHS FATA	Agency Surgeon FR Kohat.	At the disposal of Agency Surgeon.
4	Mr. Subhan Office Asstt.	Agency Surgeon, Khyber	AHQ: Hospital Landikotal	Against his original place of posting.
5	Mr. Lutf ur Rehman Senior Clerk	Record Section DHS FATA	EPI Office DHS FATA	Vice No. 2 above.

They will draw salaries from their original place of posting.

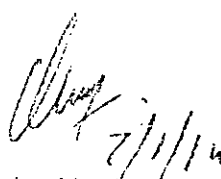
Sd/-xx
Director Health Services
FATA Peshawar.

No. 454-60/DHS/FATA/Admn:

Dated Peshawar 17-10/2014

Copy forwarded to the:-

1. Deputy Director Admn: DHS FATA Peshawar.
2. Asstt: Director EPI FATA.
3. Agency Surgeons, Mohmand, Khyber & FR Kohat.
4. Accountant Local Office.
5. Officials concerned.


Director Health Services
FATA Peshawar.

Attested to be
True Copy

(7)

ANNEX B

OFFICE OF THE AGENCY SURGEON MOHMAND
AT GHALLANAI

OFFICE ORDER

Muhammad Ullah Office Assistant (on General Duty) Presently Working as Head Clerk of Agency Surgeon Office Mohmand Agency is hereby relieved off his duty and directed to report to Director Health Services FATA Peshawar for further posting with immediate effect.

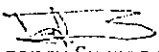
----- Sd -----
Agency Surgeon,
Mohmand at Ghallanai

No 7059-63/ASM

Dated 09 / 09 / 2015.

Copy forwarded to the:

1. Director Health services FATA Peshawar.
2. Political Agent Mohmand Agency.
3. Agency Accounts Officer Mohmand at Gailanai
4. Muhammad Ullah Head Clerk is directed to handover the complete charge to Mr Yaqoob Khan senior clerk with immediate effect.
5. Mr. Yaqoob Khan senior Clerk is directed to take over the charge from Muhammad Ullah Assistant immediately..


Agency Surgeon,
Mohmand at Ghallanai

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ANNEX C
8

FATA SECRETARIAT
(COORDINATION & ADMINISTRATION DEPARTMENT)
WARSAK ROAD PESHAWAR

NOTIFICATION

The Competent Authority has been pleased to declare posts in BS-11 to BS-15 in FATA as Agency Cadre for all Departments devolved to District on settled side vide District Cadres.

The Competent authority has been further pleased to declare the following appointing authorities in respect of Agency Cadre posts:

1.	Posts in BS-1 to BS-10	Agency Officer incharge of the concerned Department in Agency/FR.
2.	Posts in BS-11 to BS-15	Political Agent concerned.

ADDITIONAL CHIEF SECRETARY FATA

No.FS/E/100-19/(Vol-28)/6981-94
Dated 3 / 8 / 2009

Copy to:

1. All Administrative Secretaries in the Government of NWFP.
2. Secretary to Governor NWFP
3. Secretary Finance Department, FATA Secretariat.
4. Secretary P&D Department, FATA Secretariat.
5. Secretary Law and Order Department, FATA Secretariat.
6. Secretary _____ Department, FATA Secretariat.
7. Additional Accountant General (FR) Sub Office, Peshawar.
8. All Heads of Line Directorate.
9. All Political Agents/DCOs
10. All Agency Accounts Officers
11. _____
12. PS to _____
13. PS to Secretary (Admin & Coord) Department FATA Secretariat.

Sd/
(IHSANULLAH KHAN)
Section Officer (Estab)

Attested to be
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FATA SECRETARIAT
(COORDINATION & ADMINISTRATION DEPARTMENT)
WARSAK ROAD PESHAWAR

9

NOTIFICATION

The Competent Authority has been pleased to declare posts in BS-1 to BS-5 in FATA as Agency Cadre for all departments devolved to District on par with District Cadres.

The Competent Authority has been further pleased to declare the following appointing authorities in respect of Agency Cadre posts:-

1.	Posts in BS-1 to BS-10	Agency Officer incharge of the concerned department in Agency/FR
2.	Posts in BS-11 to BS-15	Political Agent concerned

ADDITIONAL CHIEF SECRETARY (FATA)

No. FS/E/100-19 (No-28) 59 81-91

Dated 3/18/2009

Copy to:-

1. All Administrative Secretaries in the Government of NWFP
2. Secretary to Governor NWFP
3. Secretary Finance Department, FATA Secretariat
4. Secretary P&D Department, FATA Secretariat
5. Secretary Law & Order Department, FATA Secretariat
6. Secretary (Admin & Util) Department, FATA Secretariat
7. Additional Accountant General (FR) Sub Office Peshawar
8. All Heads of Law Departments
9. All Heads of Agriculture Departments
10. All Heads of Animal Husbandry Departments
11. All Heads of Forest Departments
12. PS to Additional Chief Secretary, NWFP
13. PS to Secretary (Admin & Coord) Department, FATA Secretariat

20/3/09
(IKSARULLAH KHAN)
Section Officer (Estab)

~~Attested to be True Copy~~

ATTESTED

ATTESTED

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are



Establishment Section

FATA SECRETARIAT
(ADMINISTRATION, INFRASTRUCTURE & COORDINATION DEPARTMENT)
WARSAK ROAD PESHAWAR

10

NOTIFICATION:-

No. FS/E/100-19(Vol-41)/1445-51.

On creation of Agency Cadre for appointment on posts from BS-1 to BS-15 vide FATA Secretariat Notification No. FS/E/100-19(Vol-28)/6981-94 dated 03-08-2009, the competent authority has been pleased to declare the following as "Appellate Authorities" for the employees in Basic Pay Scales as noted against each:-

S.No	Basic Pay Scale (1)	Appointing Authority (2)	Appellate Authority (3)
1	For holders of posts in BPS 1 to BPS-10	Agency Officer incharge of the concerned department in Agency/FRs	Director of concerned Line Directorate
2	For holders of posts in BPS 11 to BPS-15	Political Agent concerned	Respective Administrative Secretary of the concerned Line Directorate in FATA Secretariat.

SECRETARY (ADMN: INFRA: & COORD)

Dated 02 /02/2015

Copy to :-

1. All Administrative Secretaries in FATA Secretariat
2. All Heads of Line Directorates in FATA Secretariat
3. All Political Agents
4. Deputy Commissioners (for FRs)
5. PS to ACS FATA
6. PS to Secretary AI&C Department
7. File No. FS/E/100-19(Vol-28-Agency Cadre)


(SAIFULLAH KHANT)
Section Officer (Estab)

Attested to be
True Copy

DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT, WARSAK ROAD, PESHAWAR

12

ANNEX 1

OFFICE ORDER:

The relieving order of Mr. Muhammad Ullah Office Assistant working in the office of Agency Surgeon Mohmand Agency is hereby withdrawn till the completion of inquiry of the office of Agency Surgeon Mohmand Agency under process in the National Accountability Bureau Khyber Pakhtunkhwa Peshawar.

Sd/xxxxx
Director Health Services
FATA, Peshawar

No. 19559-62/DHS/FATA/Admn

Dated: 10 /09/2015

CC:

- 1- Political Agent Mohmand Agency
- 2- Agency Surgeon Mohmand Agency
- 3- Deputy Director (Admn) DHS FATA
- 4- Official Concerned.


10-09/15

Director Health Services
FATA, Peshawar

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D

OFFICE OF THE AGENCY SURGEON
MOHMAND AT GHALLANAI

OFFICE ORDER

ANNEX E



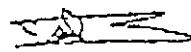
Mr. Muhammad Ullah Office Assistant (on general duty) Ex Head Clerk of this office was directed to hand over complete charge of Head Clerk to Mr. Yaqoob Senior Clerk vide this office letter No.8009-13/ASM dated 14-05-2015, but you did not hand over the charge to the concerned clerk and has taken away all the accounts records/PC-1 of the ADP Schemes and as well as the Keys of locker and Head clerk office.

Therefore, you are hereby relieved off your duty and directed to report to Director Health Services FATA for further posting with immediate effect.

Sdxxxxxxxxxxxx
Agency Surgeon
Mohmand Agency

No. 8335-38 /ASM dated Ghallana the 09 /10/2015.
Cc

- 1- Director Health Services FATA Peshawar.
- 2- Political Agent Mohmand Agency with the request to direct Mr. Muhammad Ullah Ex-Head Clerk through law enforcing agencies to hand over complete charge to Mr. Yaqoob Khan Senior Clerk.
- 3- Agency Accounts Officer Mohmand at Ghallanai
- 4- officials concerned


Agency Surgeon
Mohmand Agency

Attested to be
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E

بخدمت جناب ڈائریکٹر ایجوکیشن سندھ سرکاری اسکول اور

(13)

اسم

ANNE F جناب عالی :-

عرض کی جاتی ہے کہ فدوی اپنا مہاجرانہ کے آرڈر نمبر 454-65/043/454 نمبر 7-1-2014 کے مطابق ایجنسی سرجن مہمند آفس میں بمشیت پید
کے ریڈیو کے ساتھ ریڈیو ایجنسی سرجن مہمند آفس میں بمشیت پید
فدوی کو جس بٹاک پیپر پارا Release کر رہا ہے حالانکہ
فدوی کا 65-16/043 کا وارنٹ ہے جسکے Relieving کا اختیار ایجنسی سرجن
مہاجرانہ پاس نہیں ہے اور وہ اپنے قانونی اختیارات سے
بچاؤ کر رہا ہے

فدوی کو ایک دفعہ آرڈر نمبر 7059-63/043/454 تاریخ 9-9-2015 پر
Relieved کیا گیا جو اپنا مہاجرانہ کے آرڈر نمبر 19559-65/043/454
تاریخ 10-9-2015 پر کنسل کیا مگر ایجنسی سرجن مہمند نے فدوی
کو ایک دفعہ پھر آرڈر نمبر 8335-38/043/454 تاریخ 9-10-2015 کے
تحت دوبارہ Relieved کیا

جناب عالی :- حیران کن ہے کہ ایجنسی سرجن مہمند
فدوی کو پارا پار ٹاچ کر رہا ہے اختیارات سے بچاؤ کر رہا ہے
اس لیے گذشتہ کی جاتی ہے کہ ایجنسی سرجن مہمند کا
Relieving آرڈر کنسل کیا جائے

Dt: 9-10-2015

المبارک
اپ کا تاجدار محمد اللہ بیگ گل ایجنسی سرجن آفس مہمند

Attested to be True Copy

F



DIRECTORATE OF HEALTH SERVICES
FATA SECRETARIAT, WARSAK ROAD, PESHAWAR

Phone # 091-9210212

Fax# 091-9212110

Dated: 13/10/2015

No. 21284-86 /DHS/FATA/Admn.

OFFICER ORDER

Annex "G"

18

Subject:- INQUIRY

Reference to the office order No. 8335-38/ASM dated 13/10/2015.

Dr. Fazal Maula Deputy Director Development DHS FATA is hereby nominated as an Inquiry Officer to look in to the matter and submit factual findings/ report to the office of undersigned within one week period in light of the following ToTs:

1. To assess the administrative actions taken by the Agency Surgeon against Mr. Mohmmad-Ullah Head Clerk attached to the office of Agency Surgeon Mohmand Agency.
2. To find out the failure in compliance and illegal possession of official assets/ record by Mr. Mohammad-Ullah Head Clerk.
3. Any **OTHER** matter relevant to the inquiry or the Inquiry Officer considers essential for the purpose mentioned.

Director Health Services,
FATA Secretariat, Peshawar.

Cc.

1. Agency Surgeon Mohmand at Ghalanai.
2. PS to SSS Department, FATA.
3. Mr. Mohammadullah Head Clerk Mohmand Agency.

13/10/15
Director Health Services,
FATA Secretariat, Peshawar.

0/ L 2

**Attended to be
True Copy**

G

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT, WARSAK ROAD, PESHAWAR

No. 22680-82 /DHS/FATA/Admn

Dated 30/10/2015

To

CONFIDENTIAL

Mr. Fida Gohar,
Investigation Officer,
National Accountability Bureau,
PDA Complex Block-III Phase-V, Hayatabad, Peshawar.

ANNEX H

15

Subject:- INQUIRY AGAINST DR. DAUD KHAN EX-AGENCY SURGEON, MR. NISAR KHAN SENIOR CLERK/ACCOUNTANT MOHMAND AGENCY AND OTHERS.

It is in reference to the meeting held in the office of the undersigned, enclosed please find herewith the personal files of the following employees of Mohmand Agency, please:

- 1- Mst. Khair ul wara D/o Sabz Ali LHV
- 2- Mst. Zahida Habib D/o Habib Ur Rahman LHV
- 3- Ms. Jamila D/o Fazal Subhan LHV
- 4- Ms. Robana Bibi D/o Zafar Khan LHV
- 5- Ms. Bast Tila D/o Said Rahman LHV
- 6- Ms. Gul Naz Begum D/o Haji Muhammad Namir LHV
- 7- Ms. Mehnaz Ibrar D/o Muhammad Ibrar LHV
- 8- Ms. Neelofar D/o Ali Akbar LHV
- 9- Mr. Abdul Qadar S/o Jabbar Khan Medical Technician
- 10-Mr. Niaz Ali Medical Technician

Director Health Services
FATA, Peshawar

CC:

1- Deputy Director (Admn) DHS FATA

✓ 2- ~~Muhammad Ullah Office Assistant/Head Clerk Mohmand Agency~~

30/10/15
Director Health Services
FATA, Peshawar

Received by
YAG
05/11/2015
02

Attested to be
True Copy

H



Annex "I"

16

ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

**Attested to be
True Copy**

17

Posting/transfer from FATA and vice versa.

I am directed to refer to the subject noted above and to state that the Centrally Administered Tribal Areas (Employees' Status) Order 1972 (President's Order No. 13 of 1972) provides that:

"Notwithstanding anything contained in their condition of service, the employees shall from the appointed day, be the employees of the Provincial government on deputation to the Federal Government and shall work under the overall administrative control of the Provincial government, on the same terms and conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or tenure of office as were applicable to them immediately before that day; provided that the employees shall not be entitled to deputation allowance for their service after the appointed day".


2. According to the Posting/Transfer Policy of the Provincial Government, the Governor NWFP and the Chief Secretary NWFP are the competent authorities for posting/transfer of Civil Servants in BS-18 and above and up to BS-17 respectively. The policy prescribes two years normal tenure of posting in FATA. Similarly, it is obligatory for all the Provincial Government employees who have been selected against Zone-I/FATA Quota to compulsorily serve in FATA for at least eighteen months.

3. It is evident from the above that employees serving in FATA are under the administrative control of the Provincial Government. However, after establishment of FATA Secretariat, it was felt imperative to have linkage between the Provincial Departments and the FATA Secretariat so that public service delivery does not suffer due to frequent reshuffling of staff without knowledge of that Secretariat.

4. Taking cognizance of frequent posting/transfer of officers/officials from FATA to settled areas and vice versa by the respective Departments without prior consultation with the FATA Secretariat, it was emphasized on all the Administrative Departments, vide circular letter No SO(E-I) E&AD/9-126/2006/Vol-II dated 26th January, 2007 that the said Secretariat should invariably be consulted before issuing orders of Posting/Transfer of Government Servants from and to FATA. However, the FATA Secretariat have frequently conveyed their apprehensions that these instructions are not being followed, and at times a very embarrassing situation for the FATA Secretariat is created as work suffers due to shortage of staff which becomes a serious issue in the prevailing law and order situation in FATA.

5. In view of above, it is reiterated that:-

- (i) All Provincial Government Departments are directed to move proposals for posting out of an employee from FATA only when a substitute is proposed in the same case.
- (ii) On consent from the FATA Secretariat and approval of the proposal by the competent authority, the substitute to FATA would invariably give his arrival for duty before the employee being transferred out of FATA is relieved.


Copy

18

- (iii) Provincial Government Departments may not accept the arrival report of an employee transferred out of FATA till his proper relieving order is issued by the FATA Secretariat.
- (iv) The Accountant General (PR) is also requested that Last Pay Certificate of an employee transferred out of FATA but not relieved properly by the FATA Secretariat may not be issued in any circumstances.
- (v) Instruction issued vide letter No.SO (E-I) E&AD /9-126/2006/Voll-II dated 26th January, 2007 (quoted in Para-4 above) should be followed strictly.
- (vi) No NOC in respect of transfer from FATA to settled area issued by any Head of Line Department of FATA Secretariat should be accepted. Only those NOCs, which have been issued by the Administration & Coordination Department, FATA Secretariat, should be considered.
- (vii) Tenure of Civil Servants must be kept in view while issuing NOC for posting/transfer or considering postings/transfers.
- (viii) No NOC's should be issued in respect of employees in BS-1-15 who is from agency cadre and in whose respect Political Agent and Agency officer have been declared as appointing authorities.
- (ix) Persons appointed in agency cadre, if appointed in the settled areas will resign from service in FATA and will resume service in settled arrears as a fresh candidate.
- (x) NOCs may be issued in respect of employees of the Provincial cadres i.e. BS-16 and above only after completion of their normal tenure and they shall not be transferred out of FATA unless their substitutes are provided simultaneously.

6. It is requested that the above Policy may be followed in letter and spirit, in further, in public interest.

(Authority: No. SOR-VI/E&AD/I-4/2008-Vol:VII Dated Peshawar, 30th March, 2009)

Change in policy to fill vacant posts in FATA to ensure better human resource management

I am directed to refer to the subject and to state that the competent authority has been pleased to make following changes to the posting/transfer Policy of the Provincial Government in respect of candidates selected from Zone-I (FATA:-

- a) Every civil servant recruited against Zone-I by Public Service Commission shall directly report to FATA Secretariat. A copy of the joining report shall be submitted by the recruited officer to FATA Secretariat who shall endorse it to the concerned administrative department in the Provincial Government. The FATA Secretariat shall arrange medical and security clearance and thereafter submit a case through the respective administrative department seeking approval of the appointing authority. The appointment letter shall be issued by FATA Secretariat

**Attested to be
True Copy**

19

No.F.1/11/2012-Lit-IV

Islamabad - the 3rd January, 2013.

OFFICE MEMORANDUM

SUBJECT: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN
CONST. PETITION NO.23/2012 FILED BY MS. ANITA TURAB
AND OTHERS VS. FEDERATION OF PAKISTAN dated 18.10.2012

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its judgment dated 12-11-2012 passed in the subject case. The operative parts of the judgment given vide para-22 are reproduced as under:-

- i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.
- iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors, which are illegal or are not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.
- iv) OSD: Officers should not be posted as OSD except for compelling reasons; which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

AN 2013

(A)

JAN 2013

(M)
(A)

[Handwritten signature]

[Handwritten initials]
23/1/13

(MC-1)/(MC-11)/(S(MC-11))
(NR-1)/(NR-11)/(NR-111)
(NR-11)

08 JAN 2013
08 JAN 2013

ATTESTED

Attested by

True Copy

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- 2. The Supreme Court has further recognized the need for ensuring that decision making in relation to tenure, appointment, removal, promotion and transfer remains ruled based and is not susceptible to arbitrariness or absolute and unfettered discretion.
- 3. In view of the foregoing, the following guidelines have been circulated vide Establishment Division's O.M.No.4/10/2012-E-2 dated 26th December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-
 - a) The normal tenure specified must be respected and may not be varied except for compelling reasons which should be recorded in writing and would be defensible if subjected to judicial scrutiny.
 - b) The officer appointed on a post be allowed to cam at least one Annual Performance Evaluation Report.
 - c) The officer should not be posted as OSD except for compelling reasons, usually for training, temporary inefficiency of extreme hardship and transit period for minimum possible time with the reasons to be recorded in writing.
 - d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

4. Attention of all the Ministries/Divisions/Departments/Organizations is also invited to the existing provisions contained in the constitution of Pakistan, 1973, Rules of Business, 1973, Pakistan Penal Code, and Conduct Rules, 1964. The relevant extracts are as under:-

The Constitution of Islamic Republic of Pakistan 1973 In terms of article 240 of the 1973 Constitution the appointment to and the conditions of service of Pakistan are determined inter-alia through the Act of Parliament.

- "4. Right of individuals to be dealt with in accordance with law, etc.
 - (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
 - (2) In particular :-
 - (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
 - (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
 - (c) no person shall be compelled to do that which the law does not require him to do"

"9. Security of person. No person shall be deprived of life or liberty save in accordance with law"

Attested to be **ATTESTED**
True Copy

Attested to be
True Copy

2. The Supreme Court has further recognized the need for ensuring that decision making in relation to tenure, appointment, removal, promotion and transfer remains ruled based and is not susceptible to arbitrariness or absolute and unfettered discretion.

3. In view of foregoing, the following guidelines have been circulated vide Establishment Division's O.M.No.4/10/2012-E-2 dated 26th December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-

- a) The normal tenure specified must be respected and may not be varied except for compelling reasons which should be recorded in writing and would be defensible if subjected to judicial scrutiny.
- b) The officer appointed on a post be allowed to earn at least one Annual Performance Evaluation Report.
- c) The officer should not be posted as OSD except for compelling reasons, usually for training, temporary inefficiency of extreme hardship and transit period for minimum possible time with the reasons to be recorded in writing.
- d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

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“4. Right of individuals to be dealt with in accordance with law, etc.

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(2) In particular:-

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- (c) no person shall be compelled to do that which the law does not require him to do:

“9. Security of person. No person shall be deprived of life or liberty save in accordance with law”

Attested to be
True Copy

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Muhammadullah

Appellant(s)/Petitioner(s)

VERSUS

the Addl: Chief Secretary

FATA and others

Respondent(s)

I/We Appellant do hereby appoint
Mr. Khaled Rehman, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

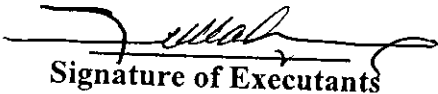
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Signature of Executants


Khaled Rehman,
Advocate
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 61/2016

Mr. Muhammad Ullah Appellant

Versus

Additional Chief Secretary FATA & Others Respondents

Para wise comments/Reply on behalf of respondent No. 1 – 4.

Respectfully Sheweth;

Preliminary objections:

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for Mis-Joinder & Non-Joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the appeal is not maintainable in its present form.
7. That, a civil servant has to serve anywhere in FATA/KP as per Rules & Law.
8. That, the appellant has concealed the actual facts from this Honourable Court

ON FACTS

1. Correct, to the extent of most senior employee of Health Department and is serving on general duty in Mohmand Agency but his personal file is adverse of his claims as is full of complaints and inquiries which does not shows his service as unblemished & spotless. **(Annex-A)**
2. Incorrect, the services of the appellant was placed at the disposal of Agency Surgeon Mohmand (Respondent No. 4) on General Duty basis.

R
12/5/16

(2)

3. Incorrect, no malafidae is involved while issuing the office order dated 09-09-2015 as it was the decision of the competent authority that all the employees working on detailment and on General Duty should report to their original place of posting. It is pertinent to mention here that there is no sanction post of Office Assistant (BPS-16) available at the sanction strength of Respondent No. 4.
4. Incorrect, the appellant was making hurdles in the management of official routine of Respondent No. 4 by locking the record with himself and his where about was unknown, in response, the Assistant Political Agent broke the locks of the office and handed over the record to Respondent No. 4 which is evident from the letter of APA Mohmand. **(Annex-B)**
5. Incorrect, the claim that after investigation the matter was decided in favour of the appellant needs proof. Moreover, the Department Appeal was in process that is why it was not responded well in time.
6. Incorrect, the appellant directly approached the Peshawar High Court Peshawar and kept the Department in dark.

ON GROUNDS

- A. Incorrect, the appellant is treated in accordance with Law & Rule, hence, no violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 have been made.
- B. Incorrect, as stated above the appellant was on General Duty in the office of Respondent No. 4. Moreover, Respondent No. 4 is the territorial & Administrative head of Health Sector in Mohmand Agency, hence the order is not void ab initio and is according to rules & Law.

(3)

- C. Incorrect, the claim regarding Ex-Agency Surgeon is completely baseless as Dr. Daud is no more in FATA & is serving in settled area. Moreover, inquiry is also underway against him in which penalty is also imposed upon him. Furthermore, no one could become the custodian of the official record.
- D. Incorrect, as stated above the appellant was on General Duty in the office of Respondent No. 4 as he is the territorial and administrative head of Health Sector of Mohmand Agency have used his power which is not the violation of rules & Law.
- E. Incorrect, the impugned order is not against the direction/instruction given by Government as the appellant was just asked to perform duty at his original place i.e. Health Directorate FATA.

It is therefore most humbly prayed that the appeal being devoid of merits/legal footing, may be dismissed with cost.

TD
20/4/16

Director Health Services,
FATA Peshawar
Respondent No. 03

TD
Agency Surgeon,
Mohmand at Ghallanai
Respondent No. 4

TD
Director General Health Services,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 02

For
Additional Chief Secretary (FATA),
FATA Secretariat, Peshawar
Respondent No. 01

25/4/16

(4)

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GOVERNMENT'S SECRETARIAT, FATA, PESHAWAR,
DIRECTORATE HEALTH SERVICES,
FATA, NWFP, PESHAWAR.

OFFICE ORDER.

Dr: Sartaj Khan Dy: Director (CDC) attached to this Directorate is hereby nominated as Enquiry Officer on the attached Complaint made by President Fazli-Ur-Rahman Afridi And General Secretary Mr. Misal Khan, Para Medical Association Khyber Agency against Mr. Muhammadullah Sr: Clerk AMH Hospital Landikotal, vide his No.P.M.A. Dated 12.05.2005.

cc/- x x x

DIRECTOR HEALTH SERVICES,
FATA, NWFP, PESHAWAR.


NO. 5503-4 /FATA/Admn/Complaint Dated Peshawar the 12/5/2005

Copy alongwith a copy of Complaint forwarded to the Dy: Director (CDC) Directorate Health Services, FATA, NWFP, Peshawar for information and necessary action and to conduct enquiry and report within three (3) days after the receipt of this letter, for further necessary action.

2/- Complaint.

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DIRECTOR HEALTH SERVICES,
FATA, NWFP, PESHAWAR.

12/5

attested


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**DIRECTORATE HEALTH SERVICES, FATA,
WARSAK ROAD PESHAWAR.**

Office Order

In continuation of this Directorate office order No.8802-05/AD(Admn) Dated 26.5.2006 Mr Muhammad Ullah Senior Clerk is hereby placed at the disposal of the Agency Surgeon SW Wana on Administrative Ground with immediate effect.

Report compliance within three(3) positively.

Sd/-----
Director Health Services,
FATA,NWFP,Peshawar.

NO- 9098-9/02 /FATA/Admn/ S.Clerk. Dated 31 /5/2006
Copy forwarded to the:-

1. PS to Secretary FATA Governors Secretariat FATA Peshawar.
2. Agency Surgeon SW Wana. / *MS AHC.H. Landi K. Lal*
3. Agency Accounts Officer, Khyber, SW Wana.
4. Superintendent, DHS FATA, Office, Peshawar.
5. Official concerned.

Received
1/6/06

[Signature]
Director Health Services,
FATA,NWFP,Peshawar.

6

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**DIRECTORATE HEALTH SERVICES, FATA,
WARSAK ROAD PESHAWAR.**

7209

No. 7209 /DHS/FATA/Admn Dated: 1 / 6 /2006

To

The Medical Superintendent,
AHQ:Hospital Landikotal.

Subject:-
Memo,

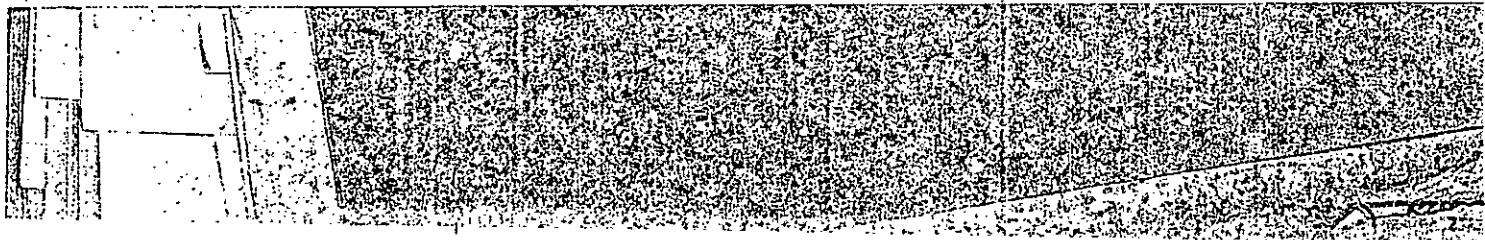
NON-COMPLIANCE OF DHS FATAORDER

Reference your letter No 1148 Dated 1.6.2006, on the subject noted above. Mr.Muhammad ullah Sr.Clerk who have been transferred from AHQ :Hospital Landikotal Khyber Agency to Agency Surgeon SW Wana,but as per your letter he is still attending your office.

You are directed to explain your position that why you are letting him in the office. And submit your report compliance within 24-hour immediately.

Director Health Services,
FATA, Peshawar.

011



7

FAC NO. :

Mar. 01 2004 01:5

5245
3/8/06

PF

Dated, 31/5/06

The Medical Superintendent
Agency Headquarter Hospital
Landikotal

The Assistant Political Agent,
Landikotal

MR. MUHAMMADULLAH SENIOR CLERK.

I have the honour to state that Mr Muhammadullah Senior Clerk
has transferred from Agency HQ Hospital, Landikotal. He is involved in anti
administration activities and also gives information to the different agencies like I.B.M.I
working in Cyber Agency

It is therefore requested to stop him from anti administration
activities

Medical Superintendent,
Agency Headquarter Hospital
Landikotal

143

Copy to:-

The Director Health Services (FATA) N.W.F.P Peshawar for information
please.

Medical Superintendent,
Agency Headquarter Hospital,
Landikotal

2013
Agia M.S.
to send his
report
advance

11.6.06
Date

8

59

5344
7/6/06

OFFICE OF THE AGENCY SURGEON
SOUTH WAZIRISTAN AGENCY WANA

No. 9473
Dated Wana the

03/06/2006

To

The Director Health Services,
FATA, NWFP, Peshawar

Subject:
Dear Sir

Office Order

Reference your office order endorsement No. 9098-9103/FATA/Admn./S.clerk dtd 31-05-2006.

I have the honour to state that Mr. Mohammad ulah Senior Clerk under transferred to this office ~~has not reported for arrival so far.~~

Report is submitted for your kind information please.

~~Agency Surgeon~~
~~South Waziristan Agency~~

5-1

R.K

9

89

FAX NO. :

Sep. 24 2006 05:01AM P1

No. 86 /G-3.. Date: 27/01/2009.

From: **The Medical Superintendent,
Agency Headquarter Hospital,
Landikotal.**

To, **The Director Health Services,
(FATA) N.W.F.P Peshawar.**

Subject:- **ATTACK ON M.S.OFFICE.**
Sir,

I have the honour to state that on 27.01.2009 at 11-15 AM, Mr. Muhammadullah Senior Clerk Agency Surgeon Office Khyber suddenly entered my office with a gentri and attacked my office and broke down all the sanitary and windows of the office.

Therefore it is requested to take the matter seriously and oblige.

[Signature]
Medical Superintendent,
Agency Headquarter Hospital,
Landikotal.

No. _____

- Copy to:-
1. The Political Agent Khyber.
 2. The Agency Surgeon Khyber at Jamrud.
 3. The Assistant Political Agent Landikotal.
- For information please.

Directorate of Health Services
Entry No. 420
Date: 28.1.09.

A/S for Engineering
[Signature]
27/11

[Signature]
Medical Superintendent,
Agency Headquarter Hospital,
Landikotal.

10

91

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSACK ROAD PESHAWAR.

OFFICE ORDER:

The Agency Surgeon Khyber at Landikotal is hereby appointed as Inquiry Officer in the attached complaint of the Medical Superintendent AHQ:Hospital Landikotal against Mr:MuhammadUllah Head Clerk of his office and directed to conduct facts finding inquiry in the matter and submit a detail report within (7) days of the receipt of this letter positively for further necessary action.


Sd/-
Director Health Services,
FATA.Peshawar.

No. 1159-61 /FATA/Admn

Dated 28 / 1 / 2009

Copy alongwith copy of letter is forwarded to the:-

1. Agency Surgeon Khyber at Landikotal for information and n/action.
2. MS AHQ:Hospital Landikotal, w/r to his letter No.86 dated 27.1.2008.
3. Mr:MuhammadUllah Head Clerk attached to Agency Surgeon Khyber for information .He is hereby directed to appear before the Enquiry officer and record his statement in his defiance.

v/c

Director Health Services,
FATA.Peshawar.

DEPARTMENT OF HEALTH SERVICES FATA
SECRETARIAT, WARSAK ROAD PESHAWAR.

ORDER:

Mr. Fazal Ur Rehman, EPI Technician AHQ: Landikotal is hereby suspended from service on account of assault on the Medical Superintendent AHQ: Hospital Landikotal in his office with immediate effect.

Subsequently Dr. Abdul Khaliq, Program Manager TB Control Program FATA is hereby appointed as Enquiry Officer in the incident in the AHQ: Hospital Landikotal. He is directed to conduct a fact finding enquiry against Mr. Muhammad Ullah, Office Assistant and Mr. Fazal Ur Rehman, EPI Technician and submit a detail report within 07 days positively.

.....sd.....
Director Health Services,
FATA, Peshawar.

No. 16174-78 /DHS/FATA

Dated 1 /11/2011

Copy forwarded to:

- 1. Program Manager TB Control Program FATA.
 - 2. Agency Surgeon Khyber at Jamrud.
 - 3. Medical Superintendent AHQ: Hospital Landikotal.
 - 4. Agency Accounts Officer, Khyber at Jamrud.
 - 5. Officials concerned.
- For information and further necessary action.

(Signature)
Director Health Services
FATA, Peshawar



12

OFFICE OF THE ASSISTANT POLITICAL AGENT
UPPER MOHMAND SUB DIVISION
Tel: No#0924-290004 Email:apauppermohmand@gmail.com

No. 1583-85 /APA (UM)

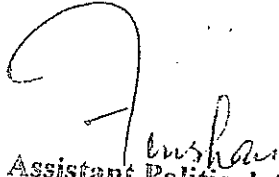
Dated 21 Oct, 2015

To : Political Agent,
Mohmand Agency

Subject : ABSCONDING CLERK MUHAMMAD ULLAH
Memorandum:

Please refer to your letter No. 4915-16/PA-M Dated 19-10-2015 on the subject cited above.

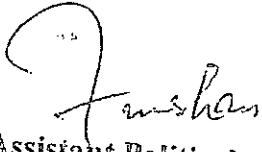
It is to inform your good-self that acting upon your directions the undersigned along with Agency Surgeon Mohmand broke the lock and opened the door of Head Clerk room in the office of Agency Surgeon Mohmand Agency on date 19-10-2015. The officers concerned handed over computer along with printer, safe/locker but without keys and office record to Mr. Yaqoob Khan Head Clerk (List of the record is attached). The video clip of the whole operation has been recorded.


Assistant Political Agent
Upper Mohmand Sub Division

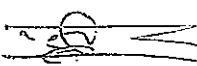
No. 1583-85 /APA/UM

Copy to:-

1. Director Health Services FATA.
2. Agency Surgeon Mohmand Agency.


Assistant Political Agent
Upper Mohmand Sub Division

Seen & file


21-10-2015
ASW.

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 61/2016

Mr. Muhammad Ullah **V/S** Additional Chief Secretary FATA & Others

REPLY OF SUSPENSION APPLICATION

Preliminary objections

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honourable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for Mis-Joinder & Non-Joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the appeal is not maintainable in its present form.
7. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed.
8. That the present appeal is against the provision of S. 56 (d) of Specific Relief Act.
9. That, the applicant does not provide the requirement of interim relief.

Respectfully Sheweth;


1. No Comments.
2. Incorrect, none from the three ingredients that is required for a stay is in favour of the appellant.
3. Incorrect, suspension of the order will not only encourage such arrogant officials but also badly suffer the function of the department.

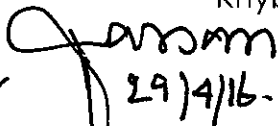
It is therefore, most humbly prayed that on acceptance of this reply-instant application filed by the petitioner/appellant for suspension of operation of order 09-10-2015 may please be dismissed.


25/4/16

Director Health Services,
FATA Peshawar
Respondent No. 03


Agency Surgeon,
Mohmand at Ghallanai
Respondent No. 4


Director General Health Services,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 02


For 29/4/16
Additional Chief Secretary (FATA),
FATA Secretariat, Peshawar
Respondent No. 01

25/4/16

1

IN THE PESHAWAR HIGH COURT PESHAWAR

Service Appeal No. 61 /2016

MuhammadullahAppellant

Versus

Add: Chief Secretary FATA and others Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder with Affidavit			1-4
2.	Inquiry Report		Rj/1	5- 5j
3.	Management Cadre Policy of 2008		Rj/2	06-09.
4.	Notification	25.02.2016	Rj/3	10.
5.	Proposal	27.12.2014	Rj/4	11-19.
6.	Transfer order of Respondent No.4	12.12.2014	Rj/5	20.
7.	Transfer order of Respondent No.4 to the post of Agency Surgeon	08.05.2015	Rj/6	21.
8.	2015 PLC (CS) 151 2010 SCMR 1301		Rj/7	22-33.
9.	Policy of the Provincial Government		Rj/8	34-40.
10.	Letter of Respondent No.3 to Respondent No.4	07.03.2016	Rj/9	41.

Through

Appellant

Khaled Rattman
Advocate, Peshawar

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

Cell # 0345-9337312

26/7/16
Dated: 26/07/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 61 /2016

MuhammadullahAppellant

Versus

Addl: Chief Secretary FATA and others Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS NO.1-4.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Appellant has got a strong cause of action and for that matter locus standi to file the instant appeal. The estoppels cannot run against the law. All the proper and necessary parties have been arrayed as Respondents in the instant appeal being filed within time in its correct form and shape. No thing has been concealed from the Hon'ble Tribunal.

Facts:

1. Incorrect. The answering Respondents have placed on record documents relating to old and settled issues which have nothing to do with the case in hand. The letter dated 25.05.2005 appertained to the issue of illegal and unauthorized collection of revenue by the Para-Medics staff of the Agency Headquarters Hospital, Khyber Agency. The MS of the concerned hospital had taken the action and subsequently an inquiry Officer was appointed, however, the matter was patched up and the illegal and unauthorized collection was stopped. As far as the transfer order dated 31.05.2006 and non-compliance report dated

01.06.2006 are concerned, the same were subsequently cancelled. The office orders/letters dated 31.05.2006, 01.06.2006, 31.05.2006, 07.06.2006, 27.01.2009, 28.01.2009 and 01.11.2011 appertained to the same issue which was enquired into by Dr. Abdul Khaliq, Programme Manager, TB Control Programme and he gave findings in favour of the appellant (copy of the Inquiry Report *Annex:-Rj/1*).

2. Misconceived. The order dated 07.01.2014 is a plain and routine transfer order and not a posting order on general duty. It is further added for the information of the Hon'ble Tribunal that the Agency Surgeon, Mohmand Agency/Respondent No.4 namely Dr. Razauallah is a Medical Officer (BPS-17) of general cadre while the post of the Agency Surgeon is a BPS-18 office of administrative/management cadre post, however, Respondent No.4 has illegally been posted against the same in violation of the law. (Copy of the Management Cadre Policy of 2008 and Notification dated 25.02.2016 on the subject matter *Annex:-Rj/2 & Annex:-Rj/3*). Moreover, previously, Respondent No.4 was holding the post of the Coordinator, National Programme, Mohmand Agency where an enquiry was conducted against him and he was found guilty of major irregularities and accordingly was recommended for the transfer vide proposal dated 21.12.2014 (*Annex:-Rj/4*) and accordingly was transferred vide order dated 12.12.2014 (*Annex:-Rj/5*), however, due to influence in the corridor of power he later on managed his transfer to the post of Agency Surgeon, vide order dated 08.05.2015 (*Annex:-Rj/6*) in his own pay-scale, hence his posting as such is against the law as held in 2015 PLC (CS) 151, 2010 SCMR 1301 (*Annex:-Rj/7*) and Policy of the Provincial Government (*Annex:-Rj/8*).
3. Incorrect hence denied. The answering Respondents have avoided to answer Para-3 of the appeal. The transfer order dated 09.09.2015 was an incompetent and illegal order as per the law and was therefore cancelled by the competent authority. It is incorrect that there is no sanctioned post of Office Assistant available at the strength of Respondent No.4. The appellant was

transferred to the office of Agency Surgeon on 07.01.2014 and satisfactorily performing his duty there without any complaint till 09.09.2015, for a period of more than 1½ years. Meanwhile, when the NAB enquiry was initiated against the ex-Agency Surgeon Dr. Daud Khan, the order dated 09.09.2015 was issued so as to save the ex-Agency Surgeon who happened to be the uncle of Respondent No.4. There is no mention in the order ibid with regard to the detailment of the appellant or for that matter non-availability of the post in the office Agency Surgeon.

4. Incorrect hence denied. Respondent No.4 for his personal interest abused his official position inspite of the directions of the competent authority and relieved the appellant once again on false pretext, however, the Respondent No.3/Director Health Services FATA did not accede to the unilateral relieving order of Respondent No.4, therefore, the appellant was holding the responsibility of the post but by misusing his authority and misguiding the Political Administration, the lock of the Almirah was broken while the appellant was in office.
5. Incorrect. The answering Respondents have admitted Para-5 in between the lines. The Enquiry Report may also be requisitioned from the office of Respondent No.3.
6. Incorrect hence denied.

Grounds:

- A. Incorrect. The appellant was not treated according to law.
- B. Incorrect. The appellant was properly posted in his own pay and scale by the competent authority. Respondent No.4 has no legal competence in matters of transfer and posting of the Office Assistant (BPS-16).
- C. Incorrect. The Respondents have also not replied properly to ground-C of the appeal which amounts to admission. It is also wrong that the ex-Agency Surgeon namely Dr. Daud is not

working in FATA, as a matter of fact he is still working in FATA as Medical Officer in AHQ Hospital, Landi Kotal and the NAB enquiry against him is still underway.

D&E. Incorrect hence denied. Additionally Respondent No.4 exceeding his powers by issuing the impugned orders. Moreover, Respondent No.4 was not obeying the lawful order of the Hon'ble Tribunal, hence Respondent No.3 directed him to honour the order of the Hon'ble Tribunal vide order dated 07.03.2016 (*Annex:-Rj/9*)

It is, therefore, humbly prayed that the reply of answering Respondents No.1-4 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 26/07/2016

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Ullah
Appellant 2



DIRECTORATE OF HEALTH SERVICES FATA
WARSAK ROAD PESHAWAR

PHONE No# 0919210212, TBC OFFICE 091-9239330

No. 1-50/Devtbc/DHS/FATA/2011-12

DATED: 22/12/2011


Rj/1 (5)

To

Director, Health Services
FATA, Peshawar

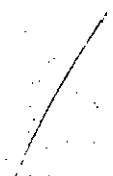
Subject: **Inquiry in the Incidence took place on 26th October 2011 at AHQ Hospital Landikotal, Khyber Agency.**

Reference to your office letter No. 16174-78/DHS/FATA dated: 1st November 2011, the detailed inquiry report regarding the subject incidence is hereby submitted for further necessary action please.


Dr. Abdul Khaliq (Inquiry Officer)
Program Manager
TB Control Program FATA

Copy to:

1. Deputy Director Admin, with reference to office letter No. 18231-32/DHS/FATA Dated 21st December 2011.


Dr. Abdul Khaliq (Inquiry Officer)
Program Manager
TB Control Program FATA

8 (SA)

INQUIRY REPORT OF INCIDENCE TOOK PLACE IN THE OFFICE OF THE MEDICAL SUPERINTENDANT AHQ HOSPITAL LANDIKOTAL ON 26/10/2011.

The inquiry about the incidence was referred by Director Health Services FATA and I was nominated as inquiry officer for the task. The following procedure was adapted to probe into the matter.

1. Recording statements of the relevant staff (witnesses).
2. General observations and site inspection
3. Study of official documents i.e. letters, Reports etc
4. Discussion
5. Recommendations

STATEMENTS OF STAFF

1. STATEMENT OF DR.ZAR ALAM EX-MEDICAL SUPERINTENDENT AHQH LANDIKOTAL:

According to the statement of Dr.Zar Alam on 26.10.2011 at 10:45 am, he was sitting in his office when both Mr.Muhammadullah and Mr.Fazal Rehman along with few unknown person entered his office and attacked him. They damaged the office and also injured him. Accordingly he was shifted to Hayatabad Medical Complex Peshawar in unconscious condition. He remained there in the neurosurgery ward under observation and treatment for 12-16 hours and was discharged thereafter. He further said that it is 4th time they attacked him and every time it is reported to Director Health Services FATA but no action is being taken. He requested that both of them may be transferred out for smooth running of the hospital. Answering to a question he said that Muhammadullah office assistant damaged the office and then ran away. In response to another question he said that he had no previous differences with Mr.Fazal Rehman but the current incidence was pre planned.

2. STATEMENT OF MR.MUHAMMAD ULLAH OFFICE ASSISTANT:

According to the statement of Mr.Muhammadullah, he worked as head clerk in MS office till 2005 before the present posting. At that time Dr.Muzahir Hussain was Medical Superintendent and Dr.Zar Alam was children specialist. Differences started between the two when Dr. Muzahir Hussain was directed by the govt to close

W

SB

"Alshifa Medical Center" belongs to Dr.Zar Alam. It was on 11.02.2005 that Dr.Zar Alam misbehaved with the Medical Superintendent in his office, using abusive language and giving him life threats. This was reported to DHS vide letter No: 335 /PF dated 11.02.2005. He was eye witness of that incidence mentioned in that letter. Since that incidence the differences started between Dr.Zar Alam & Mr.Muhammadullah. After some time Dr.Zar Alam was posted as Medical Superintendent of the hospital besides all other tactics, he was ultimately transferred to Agency Surgeon Khyber office. Dr.Zar Alam did not stop here and informed Mr.Muhammadullah on phone that MS is converting his old office to washroom. He requested Medical Superintendent not to do this to disgrace and mentally torture him. He further said in his statement that this is a unique example of two washrooms in one office. He misused his authority and caused losses to the govt exchequer.

Regarding the current incidence he said that on 26.10.201, he was on duty in Agency Surgeon sub -office Landikotal (Located in AHQH just opposite to the Admin block of the Hospital) and went out for some task and saw Dr.Zar Alam coming out from his office. MS told him that though he has been transferred but he converted his(Muhammad-Ullah) office into and used as washroom. Mr.Muhammadullah stated that still he remained silent but when reached down stairs then he thought that MS disgraced him so he could not controlled his emotions, went to MS office and broke the commode of that washroom and went home. The rest of the damage at MS office has been done by Dr.Zar Alam himself.

3. STATEMENT OF MR.FAZAL REHMAN EPI VACCINATOR AHQ HOSPITAL LANDIKOTAL.

According to his statement he was on duty in his EPI center when suddenly he heard noise in the first floor of the hospital and that Muhammadullah has damaged the toilet of MS office .He went upstairs and observed that the washroom of MS office was damaged. He was then sitting in gallery when Dr.Zar Alam entered his office and started breaking the glasses of his office while Mr.Fazal Rehman requested him not to do so. Then he went to Senior Clerk office where Dr.Rasim Shah told him that you have again damaged the office. He answered that he is not concerned with it. At that moment his son called him on mobile that khasadar

[Handwritten signature]

Sc

wanted to arrest him in connection of damaging the MS office. Then he went to Dr.Zar Alam just to tell him why he called Khasadar being not involved in the incidence. Then Dr.Zar Alam attacked him and held him from the collar. In the mean time Mr.Gul Math Shah and other staff came to control the situation. Dr.Zar Alam slipped and fell on ground. He further added in his statement that he neither hit Dr.Zar Alam nor he injured but It was a conspiracy against him as a few days earlier he published a press statement in fervor of Media. The proposal of his brother Dr.M.Rehman as MS of this hospital was also in the process so he wanted to sabotage this process and to cancel his(Dr.Zar Alam) posting order.

4. STATEMENT OF DR.ASIF IQBAL CARDIOLOGIST AHQH LANDIKOTAL.

According to the statement of Dr.Asif Iqbal, he was in the S/C office to mark his attendance when he heard some noise and the clerical staff went out. He remained in the clerical office when he again heard noise and went to MS office. He saw that MS was laying on the floor in unconscious condition. They put him on the sofa and started medical checkup. There was no apparent wound on his body. His blood pressure was 180/110mmHg. He administered inj. Fenac, inj. Gravinate, inj.Decadron and passed IV canula. After about 20 minutes he improved but still could not talk but he touching his head to express some trouble. So Dr.Asif Iqbal referred him to Peshawar for further management.

5. STATEMENT OF DR.FAZAL RAZIQ DMS AHQH LANDIKOTAL.

According to his statement He was present in his office when his W/orderly told him that there was a fight in the hospital. He went to MS office. When he entered MS office, he found that Dr.Zar Alam was laying unconscious and doctors and other staff was standing around him. Later on he was referred to Peshawar.

6. STATEMENT OF MR UMER KHAN SENIOR CLERK MS OFFICE AHQH LANDIKOTAL.

According to the statement of Mr.Umer Khan, on 26.10.2011 Mr.Muhammadullah came to hospital, we meet each other and after 4-5 minutes

Then Mr.Umer Khan went to his office and was busy in office work. After 15-20 minutes Mr.Attiqullh (class-IV) told him that Mr.Muhammadullah has damaged the washroom of MS office. When he went there both Dr.Zar Alam and Mr.Muhammadullah had left the office. Then he went back to his office where Mr.Fazal Rehman was also sitting there and was talking on mobile phone. Then Mr.Fazal Rehman told Mr.Umer Khan that why khasadar are behind him. He did nothing wrong and then left his office. Just after a minute he heard noise in MS office and when went there he saw Dr.Zar Alam lying on the floor. Then he was examined by doctors and referred to Peshawar.

7. STATEMENT OF MR.GUL MATH SHAH STORE KEEPER.

According to his statement at the time of incidence he was sitting in MS office and talking on phone. In the meantime Mr.Fazal Rehman entered into the MS office and started talking to Dr.Zar Alam. During talks they became excited and started fighting. I got hold of Mr.Fazal Rehman and saw MS lying on floor put him on the sofa. He was examined by doctors and referred to Peshawar after giving him necessary treatment.

8. STATEMENT OF MR.AKBAR HUSSAIN WARD ORDERLY.

Mr. Akbar Hussain stated on oath that at the time of incidence He was standing at the door of MS office. Mr.Fazal Rehman entered MS in aggressive mood and protested that why he asked khasadar to arrest Mr.Fazal Rehman as he has done nothing wrong. While Dr.Zar Alam took something from table and threw at him and then fighting started between the two. In response Mr.Fazal Rehman attacked MS by throwing chair at him and he fell down on the floor and became unconscious then he was examined by doctors and referred to Peshawar. Regarding the damage to the glass partition in the office he said that did not see who broken it.

9. STATEMENT OF MR.ATTIQ ULLAH CLASSIV MS OFFICE.

According to his statement he was standing at the door of MS office when he saw that Muhammadullah entered MS office. Medical Superintendent along with another man named Mr.Shafiullah was sitting in his office. Mr.Muhammadullah went

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straight to the washroom without talking to anyone. He damaged the washroom and went out of the MS office. A hammer was seen in his possession.

10. STATEMENT OF DR. RASIM SHAH MEDICAL OFFICER.

According to him he was busy in examination of patients in the OPD when a staff member came and said that Dr. Zar Alam is calling him to his office. When he entered his office he saw that all the glass pans were broken. Dr. Zar Alam told that all this damage has been done by Mr. Muhammadullah and he asked Dr. Rasim Shah to write a report to APA. Then he was sitting in Senior Clerk office to prepare the report when Mr. Fazal Rehman also came and sat with him. In the meantime Mr. Fazal Rehman received a call on mobile and talking to some body he said why his name has been included in the report and went out of the senior clerk office & entered MS office. The Dr. Rasim Shah heard noise in the MS office and he went there and saw Dr. Zar Alam lying semi-conscious on the floor. After examination and treatment by Dr. Asif Iqbal he was referred to HMC Peshawar.

11. STATEMENT OF MR. KHAISTA MUHAMMAD JUNIOR CLERK.

According to his statement he was sitting in Mr. Umer Khan (S/C) office at the time of incidence. Besides me Dr. Rasim Shah, Mr. Fazal Rehman and Mr. Umer Khan were also present there. In the mean time Mr. Fazal Rehman received a call on his mobile from his son. His son told him that khasadar staff has come to arrest him. Then Mr. Fazal Rehman went out. Mr. Khaista Muhammad thought he went to his shop outside the hospital. But he actually entered MS office and started fighting with the Medical Superintendent. When He went there MS was lying unconscious. Dr. Asif Iqbal gave him initial treatment and referred him to Peshawar.

SF

OBSERVATIONS AND SITE INSPECTION

I personally visited AHQ Hospital Landikotal twice, first on 03/11/2011 and then on 17/11/2011. It was observed that surprisingly there were 02 washrooms in the office of the Medical superintendent which is a unique example. One is original as per drawings of the building of AHQH and the second one is the conversion of the Head Clerk/PA to MS office into washroom by the Ex Medical Superintendent just for his ego satisfaction and to torture mentally office assistant Mr. Muhammadullah and the root cause of the whole serial. Only the commode of this washroom was in broken form. This is the Medical Superintendent own need and modification so the MS may be charged for construction to original structure (HC/PA office). There is a glass partition between the washroom and the MS office; the glasses of the partition were found broken.

DOCUMENTS:

The following documents were also taken into account while finalizing this report:

1. Photocopy of letter No: 0001/EMR dated 11.08 2000 issued by MS AHQH Landikotal.
2. Photocopy of letter No: 355/pf dated 11.02.2005 issued by MS AHQH Landikotal.
3. Photocopy of letter No: 1201 As-Khy/inq dated 31.12.2007, inquiry report submitted to DHS by Agency Surgeon.
4. Photocopy of inquiry report conducted by GIT and issued vide letter No; 16-495/inq /GIT/07/549 dated 21.2.2008
5. Photocopy of letter No: 2460/As-Khy /inquiry dated 16.09.2008 a detail report submitted to DHS by Agency Surgeon Khyber.
6. Photocopy of the discharge slip of HMC Peshawar furnished by Dr. Zar Alam.
7. Photocopy of letter No: 837/APA-LKL dated 24.02.2009 issued by APA Landikotal and addressed to PA Khyber bearing the subject; "TRANSFER OF DR. ZAR ALAM MEDICAL SUPERINTENDENT AHQ HOSPITAL LANDIKOTAL".
8. An application in original submitted by all the ministerial staff of Agency Surgeon and Medical Superintendent office requesting to reconvert the 2nd Toilet into

59

original structure (office) and same endorsed by the present Medical Superintendent Dr. Muhammad Nazir.

DISCUSSION:

After statements of the accused and witness it is clear that the on 26.10.2011 two different incidences took place. But Before going further we should look into the back ground. Referring to an official letter No: 0001/EMR dated 11.8.2000 issued by the Medical Superintendent AHQH Landikotal and addressed to APA Landikotal with copy to PA Khyber and DHS FATA. According to that letter serious threats were given to the then MS Dr. Mehmood Alam by Dr. Zar Alam MO AHQH Landikotal.

Reference to another letter No: 355/pf dated 11/02/2005 issued by Medical Superintendent AHQH Landikotal and addressed to Director Health FATA. According to the letter Dr. Zar Alam as children specialist was not serious towards his official duties; he violated governor directives, misbehaved, abused and even threatened the MS of the hospital. And disciplinary action was requested by the Medical Superintendent.

In another inquiry conducted by the GIT and submitted to the Secretary to Governor vide letter No: 16-495/inq/GIT/07/549 dated 21-02-2008. The first recommendation was posting of a senior, capable, well versed with administration and **NON-LOCAL** doctor as Medical superintendent of the hospital.

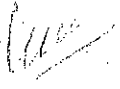
In a Report submitted by the then Agency surgeon to the Political Agent Khyber vide letter No: 2440/As-Khy/Inquiry dated 16-09-2008. The recommendation was to take action according to the recommendation of the Governor Inspection team.

It is revealed that Dr. Zar Alam treated the govt institution as his private/personal health center. His first step when he took over as MS was to modify the original structure of the hospital building and converted the ministerial staff office into a Toilet without justification as one toilet attached to the MS office already existed. This 2nd toilet was constructed just to mentally torture one of the subordinate staff and to satisfy his ego. By construction of this 2nd Toilet, he made unnecessary expenditure and loss to the govt exchequer. *WMS*

SH

In the first incidence Mr. Muhammadiullah damaged the Dr. Zar. Alam's Toilet, not official one and went away without any interaction with the MS.

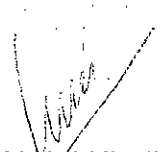
While in the 2nd incidence Mr. Fazal Rehman did not have any previous differences entered the MS office to record his protest and during the discussion they start fighting and throwing things on each other. It was a bilateral fight and there were equal chance of injury, both of them. Most of the witnesses did not state how Dr. Zar Alam got injured and the doctors who examined him did not notice any bruise/injury at the time of examination.

The discharge Slip (Neuro-surgery unit HMC Peshawar) furnished by Dr. Zar Alam does not bear admission number so the credibility becomes doubtful and there is no note regarding the condition(any injury,bruise,swelling) of the patient when received. There in neither CT scan report nor detail of other investigations. 

5i

RECOMMENDATIONS:

- The disputed 'washroom' may be demolished and reconstructed into original structure of the office of PA to Medical Superintendent and all cost may be recovered from the one who converted it to Toilet.
- The sub office of the Agency Surgeon in front of the Admin block of the MS office may immediately be removed. staff /furniture /equipment be shifted to Agency Surgeon office Jamrud govt has constructed a proper Building for the office of Agency Surgeon Khyber at Jamrud at the cost of millions of rupee.
- Specialist doctors who are posted may be facilitated and may be provided govt accommodation on priority basis even at the cost of transfer of local doctors if they resist vacating the govt accommodation.
- All the officers, officials and paramedics involved in the incidence may be transferred out of the agency as already recommended in all the previous inquiry Reports.
- Only eligible officers/doctors from management cadre having due experience and skills may be posted against the administrative posts throughout FATA for smooth and effective running of the health institutions in best interest of the people of FATA without pressures/approaches.


Dr. Abdul Khaliq (Inquiry Officer),
Program Manager,
TB Control Program FATA

Ri/2
6

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE NWFP
HEALTH DEPARTMENT

NOTIFICATION

Peshawar, dated the 11th DECEMBER, 2008

No. SOH(EV)4 – 20 / 08 : In exercise of the powers conferred by section 26 of the North West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE
HEALTH (MANAGEMENT) SERVICE RULES, 2008.

PART – I
GENERAL

1. **Short title and commencement.** --- (1) These rules may be called the North-West Frontier Province Health (Management) Service Rules, 2008.
 - (2) They shall come into force at once.

2. **Definitions.**--- In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say -
 - (a) "appointing authority" in relation to a post, means the respective authority specified in para 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
 - (b) "Commission" means the North-West Frontier Province Public Service Commission;
 - (c) "Cadre" means Health Management Cadre;
 - (d) "Government" means the Government of the North-West Frontier Province;
 - (e) "Governor" means the Governor of the North-West Frontier Province;
 - (f) "Initial recruitment" means appointment made otherwise than by promotion or transfer;
 - (g) "Member of Service" means officer belonging to health management cadre as reflected in schedule I, II & III;
 - (h) "PHSA" means Provincial Health Services Academy;

- (i) "Post" means a post specified in the Schedule-I of the rule and such other posts as may, from time to time, be determined by the Government;
- (j) "Schedule" means the schedule appended to these rules; and
- (k) "Service" means the North-West Frontier Province Health (Management) Service.

7

PART-II RECRUITMENTS

3. **Number and nature of posts.**---The Service shall comprise the posts specified in the Schedule - I and such other posts as may be determined by Government from time to time.
4. **Method of Appointment.**---Method of appointment, qualifications and other conditions to applicable to a post in the Service shall be such as laid down in the column 3 to 5 of the Schedule - II.
5. **Syllabus and examination for appointment by initial recruitment.**--- Syllabus and standard for competitive examination for appointment by initial recruitment to the post in BS-17 shall be, as laid down in Schedule-III.

PART-III CONDITIONS OF SERVICE

6. **Pre-Service Training & Departmental Examinations.**--- (1) On appointment to a post borne on the service in BS-17, every officer so appointed shall complete six months mandatory training including attachment as specified in schedule -IV.

(2) The training shall be followed by departmental examination to be conducted by Provincial Health Services Academy, which will be part of probation period.

7. **In-Service Training.**---Selection for in-service trainings which are linked with promotion shall be done on seniority basis and those at verge of promotion shall be given priority.

8. **Private Practice.**--- (1) No Member of Service shall be allowed private practice, in lieu he shall be entitled to non-practicing allowance, at such rate as may be prescribed by Government.

(2) In case of default, the Member shall be liable to disciplinary action under the law.

9. **General rule.** --- In all matters not expressly provided for in these rules, Members of Service shall be governed by such rules as have been or may hereafter be prescribed by Government from time to time.

Provided that in case of a dispute the Government shall have the final authority to decide the matter in any manner it deems fit.

10. **One time exercise.** --- (1) Notwithstanding anything contained in the provision of these rules, Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning & Management or equivalent Master's Degree / Diploma in Health management or allied disciplines and opt for absorption;

Provided that the option once exercised shall be final.

(2) Where the number of officers opting for absorption in Management Cadre is more than the available positions in respective grade, the selection under one time exercise shall be done on the basis of seniority-cum-merit only in the respective grade;

Provided that for determining the suitability of the officers, additional relevant qualifications, trainings/courses in the relevant field and managerial experience, as such, shall be taken into consideration.

11. **Deletion of posts.**---Posts reflected in the schedule-I shall stand deleted from any other service rules for the time being in force and such rules shall be deemed to have been amended to the above extent:

SECRETARY TO GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Endst. of even No & Date.

Copy to:

1. The Chairman, Public Service Commission, NWFP, Peshawar
2. PS to Minister for Health, NWFP.
3. PS to Chief Secretary, NWFP.
4. PS to Additional Chief Secretary, NWFP.
5. PS to Secretary E&A Department.
6. PS to Secretary Law Department.
7. PS to Secretary Finance Department.
8. Ps to Secretary Health.
9. PA to DGHS NWFP.
10. Computer Programmer, Health Department.

(ADIL SAEED SAFI)
SECTOIN OFFICER - V

SCHEDULE – I
(Management Cadre)

9

Members of Service in BPS-18:

S.No.	Nomenclature of post	Number of post
1.	Incharge Civil/THQ.Hospital Ziarat Kaka Sahib Nowshera, Rustam, Lund Khawar Mardan, Topi Swabi, Kalu Khan Swabi, Shakar Darra (Kohat), Thall Hangu, Serai Naurang Lakki Marwat, Balakot Mansehra and Thana Malakand Agency	10
2.	Senior Instructors DHDCs in NWFP (Abbottabad, Swat and DIKhan)	03
3.	Instructors in Public Health School, Hayatabad Peshawar and DIKhan	03
4.	Instructor Public Health School, Nishtarabad Peshawar	01
5.	Epidemiologist Govt. LRH and HMC Peshawar	02
6.	Course Director (MCH & Family Planning) PHSA NWFP	01
7.	Epidemiologist PHSA NWFP	01
8.	DMS Govt. Maternity Hospital Peshawar	01
9.	DMS (Admn) KTH Peshawar	01
10.	District TB Control Officer, Abbottabad, Kohistan, Nowshera, Charsadda, Malakand, Buner, Shangla, Lower Dir, Kohat, Hangu, Karak, Bannu, Lakki Marwat and Tank	14
11.	Deputy Director Admn./Deputy Director Dev.(02), Assistant Director EPI(02), DHS FATA	04
12.	Agency Surgeon Mohmand, Bajaur, Orakzai, Kurram, NW Agency, SW Agency, Khyber, FR Peshawar/ FR Kohat, FR DIKhan, FR Bannu,	10
13.	DMS(Admn), DMS(Stores) DMS (Dispensary) at Ayub Teaching Hospital Abbottabad	03
14.	Assistant Directors in Directorate General Health Services, NWFP, Peshawar	13
15.	ADHO FATA Health	4
	TOTAL:	71

Note: All Program /Project positions & FATA Health positions in BPS-18 would be filled from amongst Management Cadre.



RU/3
FATA SECRETARIAT
(SOCIAL SECTORS DEPARTMENT)
WARSAK ROAD PESHAWAR

10

Dated 25-02-2016

NOTIFICATION:-

Notification No.FS/SO (HH)/FATA/ 181-64 .For good governance and ensuring efficient service delivery to public in Health Sector, the Competent Authority has been pleased to decide that henceforth Agency Surgeons and medical Superintendents shall not be posted in their areas of Domicile. Only doctors having requisite qualification and professional capacity will be posted as Agency Surgeons/Medical Superintendents in Agencies/ Frontier Regions of FATA in the best interest of the government.

Secretary Social Sectors FATA

Copy to :-

1. Secretary Social Sectors FATA
2. Secretary AI&C Département FATA
3. Director Health Services FATA
4. PS to Additional Chief Secretary FATA


Section Officer (Health)

(11)

RT/4

OFFICE OF THE MEDICAL SUPERINTENDENT AHO
HOSPITAL GHALLANAI

No 2770 /M/S

Dated 29 /10/2014.

To,

Agency Surgeon
Mohmand Agency.

Subject:

Enquiry of Expired Medicine/ food Supplement of National Program/ BHU Darra Lagham Teh: Pindialy.

Memo;

Reference your order No. 2829-92 date 10/2014. we conducted inquiry regarding expired Medicine/food lying in the BHU Dara Lagham issued by coordinator National program Mohmand Agency to LHS National supervisor Dara Lagham. Being inquiry officer we visited the BHU Dara Lagham and found the following quantity of expired Medicines / food of National program were found in the store.

1. Syp: Zinc 1 cotton (48 Bottle) issued date 30/7/2011 expiry date 03/2012.
 2. ORS packet=2800 packet expired date 03/2012.
 3. Acha Mum =45 cotton (4725 packet expired date 22/12/2011.
- The following officers/officials were inquired in BHU Dara Lagham regarding expired medicine.

- 1 Dr. Muhammad Kabir Medical officer I/C BHU Dara Lagham
 2. Dr. Raza ullah coordinator National program Mohmand Agency.
 3. Miss: Ziali Huma FMT Dara Lagham
 4. Mr. Daulat Khan chokidar Dara Lagham
 5. Miss: Robina Ashfaq LHS
 6. Miss: Ajmeens LHW Dara Lagham.
- (Copies of statements attached)

1. According to statement of National program coordinator no written statement was submitted by concerned LHS regarding expired medicines
2. According to statement of LHS, Miss: Ajmeena LHW was absent since Feb: 2011 but no written report was found in the officer of National program coordinator.
3. According to statement ajmeena LHW is absent since Feb 2011 but her salary is stopped since April 2014.

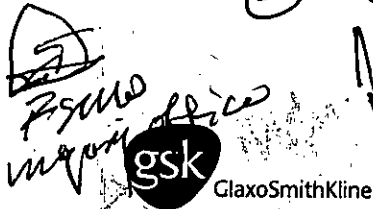
Statement of Dr Muhammad Kabir M/O
Incharge BHU Darra Laghura regarding (13)
the inquiry of expired medicines.

Respected Sir I took charge on 15/1/14
in BHU Darra Laghura and during my
ten months stay it was not in my
knowledge that there are expired
medicines laying in the Quarter. During
the visit of Agency Surgeon Mohamond it
came into my notice that the expired
medicines and some WFP food items (expired)
are also lying there. The details of expired
medicines and WFP items is given below.

- ① Zinc Spp - one cotton
- ② Acha Murr - 45 cotton
- ③ OK'S - 07 cotton.

Yours Sincerely
Dr. M. Kabir M/O Incharge
BHU Laghura Darra.

M. Kabir



Mr. M. Kabir

14

OFFICE OF THE AGENCY COORDINATOR MOHMAND AGENCY

To,

The Inquiry Committee

Subject: Statement regarding Expired Medicines of National Programme BHU Dara Lagham Mohmand Agency.

As reference agency surgeon office letter No. 2889/ASM Dated 14/10/2014.

It is stated that the undersigned have issued the National Program medicines to all 10 Nos health facilities (including BHU Dara Lagham) involved in National Programme Mohmand Agency on 16/07/2011 and 30/07/2011.

During the repeated visits of undersigned the medicine store of National Program BHU Dara Lagham was found without any medicine/empty While 7 Salter Scales without jackets were found. The Agency Surgeon Mohmand pointed out that expired medicines were found lying in the quarter of BHU Dara Lagham which is a residential area according to the Agency Surgeon letter No. 2847-50/ASM dated 10/10/2014. The concerned LHS is attending the monthly LHSs meeting and other activities regularly.

Moreover, no written report has been submitted by the concerned LHS regarding expired medicines. Action has been taken against the defaulters LHWs whenever reported by the concerned LHSs.

*ASAWO 28/10/2014
inquiry officer*

MS AHK


NP Coordinator
Mohmand Agency

حلیہ بیان

میں دولت خان آئے لی۔ ایچ پور درہ لکھنؤ

عند ہی یہ اقرار کرنا ہے

یہ دوایاں اس سٹور میں بڑی گنتی

اور اس وقت کے جبریل اسپر کے گنتی ہر

میں لکھنؤ ایک سال پہلے سے دوایاں اور سامان

میں سے کو اثر میں منتقل گیا

دولت خان درہ

B.H.U درہ لکھنؤ

28/1/2004
Punjab
Inquiry Officer

Mun
Ms AHQ.

شاہنور جناب انکوائری آفیس

18

جناب عالی! مودبانہ گزارش ہے کہ ہم نے 2011 جولائی میں

اپنے منسلق دفتر سے ایچ ایم ٹی سی اور BRS دولی وصول کرنے

سے 5 L.H.Ws دیے ہیں۔ 4 نے وصول کی ہیں آجینہ L.H.W ہے

جو کہ فروری 2011 سے غیر حاضر ہے۔ میں اس کے خلاف اپنے منسلق

افسران کو 15/16 درخواستیں دیے ہیں اس کے باوجود وہ نہ ملے ہیں صرف

کے دوران ہوئے ہیں اور نہ جاننے میں کبھی پتہ چلا ہے۔ اور نہ اپنے

اپنے دولی وصول کرنے کے لیے آئی ہے۔ اور Expiry مال کے پتے پتے میں

موجود ہے۔ اور Expiry کے بارے میں منسلق افسران کو آگاہ کیا گیا۔

پتہ پتہ کے ساتھ منسلق کی گئی ہے اور L.H.W آجینہ کے خلاف ایکشن

لیا گیا ہے۔ کیونکہ وہ غیر ملکی سے غیر حاضر ہے۔

Robina

L.H.S Robina Asthagoo

B.H.U Dara Jagann Gurchi

Teh Pandyali

28/07/2011
Enquiry officer

Mdm
MS AH20

روبینہ اسٹاگو

گنویز جناب / جسٹس سرینا کے پاس
(17)
ضابطہ

موجودہ کارڈ آرڈر سے کہ میں نے FMI سے کیا ہے اس بارے میں
میوں - کہ وہ Food آرڈر ہے - یہ دستاویز پیش کیے آئے ہیں -
اور لکڑی سپلائی ڈسٹری بیوٹرز کو رہتی ہے

BHU Layhan Ghurdai
Mohmand Agency Ghalouci
Hawal
16/10/2014

28/10/2014
Punjab
enquiry office

Mam
MS Ahmed

گدہت صبا سرجن صاحب ایچ سی بیڈ کو اور

درخواست برائے پھر روانہ طور

18

صبا عالی!

خود بانہ گذارش ہے کہ میں علقہ بیڈ ٹیبل میں

بحیثیت L.H.W ڈیوٹی دے رہی ہوں۔ میری خواہ

اپریل 2014 سے بند ہے۔ BHU لخم علی ٹیبل میں روہینہ

اور اشفاق نے جو دوای اور ایچ ایم سٹور کیا تھا اس پر ٹائم گزر چکا تھا۔ دونوں نے اپنے جان بچانے کیلئے چھوڑا درخواست لکھی کہ، ڈوای اور ایچ ایم اچینہ کی ہے۔

صبا والد یہ سبر انٹر چھوٹ ہے۔ میں باقاعدہ جاہانا

رپورٹ روہینہ کو دے چکی ہوں۔ لیکن وہ ذہن دہی سے میرا رپورٹ سینک رہی ہے اور میرا نام غر حاضر کرتی ہے۔

صبا والد میرے حال پر ریم کیلئے اور میرے 6 مہینوں کی خواہ جار کرنے کا حکم صادر فرما کر شکرورد محنون فرما دیں

عین وزارت ہوگی

10
24 2014

الکفارہ
آلکا ناعدار اچینہ

28/1



19 R/4

OFFICE OF THE AGENCY SURGEON MOHMAND AT GHALLANAI

FAX: 0924-290220
No: 8030 /ASM

Dated: 2/12/2014
Email: agency.surgeon@yahoo.com

To
The Director Health Services
FATA Peshawar

ANNEX B 10

Subject: **PROPOSAL FOR THE TRANSFER OF DR. RAZA ULLAH NATIONAL PROGRAM COORDINATOR MOHMAND AGENCY.**

Sir

I have the honour to bring once again this serious matter in your good notice that a surprise visit of BHU Dara Lagham was made by the undersigned on 30-09-2014, where a lot of **Expired** medicines/food items of National Programme were found laying in the quarter of BHU and the report was submitted to your office Vide this office letter No: 2846/ASM Dated: 10-10-2014 and copy endorsed to National Programme Coordinator Mohmand Agency but he failed to produce any documents/reply in his defence.

This major irregularity was also in the notice of Political Agent Mohmand Agency which was discussed during evening Polio meeting and the undersigned was directed by the Political Agent for taking disciplinary action against the defaulter.

I detailed an enquiry committee comprising of Dr Shabbir Ahmad FSMO & Dr Muhammad Riaz Medical Superintendant AHQ Hospital Ghallanai. The enquiry report is attached herewith with the remarks that I agreed with the conclusion of enquiry committee that the medicines/food items were expired due to negligence of National Programme Coordinator and concerned LHS.

Therefore the proposal for the transfer of National Programme coordinator Mohmand Agency is submitted herewith after the approval of Political Agent Mohmand Agency for issuing of office order for the smooth running of National Programme activities in the best interest of public of Mohmand Agency.

S.No	Name & Designation	From	To	Remarks
1.	Dr Raza Ullah NP Coordinator	Coordinator National Programme Mohmand Agency	MO I/C BHU Pandialai Mohmand Agency	--
2.	Dr Pervez Iqbal MO I/C BHU Pandialai Mohmand Agency	MO I/C BHU Pandialai Mohmand Agency	Coordinator National Programme Mohmand Agency	Move 1 st

Agency Surgeon
Mohmand Agency

No _____ /ASM

Copy to the Political Agent Mohmand Agency with reference to our discussion please.

Copy to
Political Agent

Agency Surgeon
Mohmand Agency

B

C

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

RT/5

20

OFFICE ORDER:

As approved by the competent authority the following posting/transfer of Medical Officers BPS-17 is hereby ordered in the interest of public service with immediate effect.

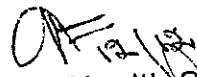
S.No	Name	From	To	Remarks
1	Dr Razaullah	National Programme Coordinator for FP & PHC Mohmand Agency	Medical Officer BHU Pandialay Mohmand Agency	Vice No.2 below
2	Dr Parvaiz Iqbal	Medical Officer BHU Pandialay Mohmand Agency	National Programme Coordinator for FP & PHC Mohmand Agency	Vice No1 above

Sd/-----
Director Health Services,
FATA Peshawar

22262-66
NO _____/FATA/Admin
Copy forwarded to the :

Dated 12/12/2014

1. Agency Surgeon Mohmand Agency w/r to his letter No.8030/ASM dated 2/12/2014
2. Agency Account Office Ghallanai at Mohmand Agency
3. Deputy Coordinator National Programme for FP and PHC Director Health Services, FATA
4. Officers concerned
5. PS to Secretary Social Sectors FATA
For information and necessary action.


Director Health Services,
FATA Peshawar



(21) Rev/6

DIRECTORATE OF HEALTH SERVICES
FATA SECRETARIAT, WARSAK ROAD, PESHAWAR

Office Order:

ANNEX D (12)

Consequent upon the approval of competent authority the following postings/transfers of the following officers of the Directorate of Health services FATA are, hereby, ordered with immediate effect in the best interest of public.

S#	Name of Officer	From	To	Remarks
1.	Dr. Niaz Afridi - BPS - 18	Agency Surgeon Mohmand	At the disposal of Directorate of Health Services FATA.	
2.	Dr. Raza Ullah - BPS - 17	Medical Officer, BHU Pandiali, Mohmand Agency	Agency Surgeon Mohmand at his own pay scale.	Vice No. 1

Sd/xxx
Secretary Social Sectors,
FATA Secretariat, Peshawar.

No//682-88/DHS/FATA/Admn, dated 08/05/2015.

Copy for information:

1. The Political Agent, Mohmand Agency at Ghallanai.
2. P.S to Additional Chief Secretary, FATA Secretariat, Peshawar.
3. P.S to Secretary Social Sectors Department, FATA Secretariat, Peshawar.
4. The Deputy Director (Admn), DHS FATA, Peshawar.
5. Agency Surgeon, Mohmand at Ghallanai.
6. Agency account Officer, Mohmand Agency at Ghallanai.
7. Officers concerned.

(Signature)

08/5/15
Director Health Services,
FATA Peshawar.

2015 P L C (C.S) 151

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Khilji Arif Hussain and Amir Hani Muslim, JJ

PROVINCE OF SINDH and others

Versus

GHULAM FAREED and others

Civil Appeals Nos.207-K to 249-K of 2013, decided on 7th February, 2014.

(Against judgments dated 1-8-2013 passed by the Sindh Service Tribunal at Karachi in Appeals Nos. 271 to 275 of 2012, 1 to 8, 27 to 42, 45 to 52 of 2013 and judgment dated 17-9-2013 passed by Sindh Service Tribunal in Appeals Nos. 75 to 80 of 2013)

(a) Sindh Service Tribunal Act (XV of 1973)---

---S. 6-A---Limitation Act (IX of 1908), S. 3---Appeal against termination order filed before Sindh Service Tribunal---Limitation---Termination order passed by an officer not competent in law to pass such an order---Effect---Such termination order would be void and without lawful authority---Consequently neither bar of limitation would be attracted nor period of limitation would run against such order---Appeal was dismissed accordingly.

Furqan Habib and others v. Government of Pakistan and others 2006 SCMR 460 distinguished.

(b) Sindh Civil Servants Act (XIV of 1973)---

---S. 9---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, R. 8-A---Appointment of a civil servant on a higher grade on "Own Pay and Scale Basis" (OPS)---Legality---Sindh Civil Servants Act, 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 did not contain any provision which could authorize the Government or competent authority to appoint any officer on a higher grade on OPS basis---Any appointment of such nature, that too of a junior officer would cause heart burning of senior officers within the cadre and/or department---Practice of appointment on OPS basis had always been discouraged by the Supreme Court, as it did not have any sanction of law, besides it impinged the self-respect and dignity of civil servants who were forced to work under their rapidly and unduly appointed fellow junior officers---Allowing such discretion to be vested in the competent authority would offend valuable rights of meritorious civil servants besides blocking promotions of deserving officers.

(c) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 8-A---Appointment to higher grade on acting charge basis---Nature and scope---Appointment of an officer of a lower scale on a higher post on current charge basis was made as a stop-gap arrangement and should not under any circumstance, last for more than 6 months---Acting charge appointment could neither be construed to be an appointment by promotion on regular basis for any purpose including seniority, nor it conferred any vested right for regular appointment---Appointment on current charge basis was purely temporary in nature or a stop-gap arrangement, which remained operative for short duration until regular appointment was made against the post.

Muhammad Sawar Khan, A.A.-G. Sindh, Adnan Karim Additional A.-G. Sindh, Jalaluddin Additional Secretary, Education and Abdul Saeed Khan Ghouri, Advocate-on-Record for Appellants.

Respondents in person

Ghulam Fareed (in C. A. No.207-K of 2013).

Shakeel Ahmed (in C. A. No.208-K of 2013).

Waqar Ahmed (in C. A. No.210-K of 2013).
Ghulam Ali (in C. A. No.211-K of 2013).
Atta Muhammad (in C. A. No.212-K of 2013).
Khalil Ahmed (in C. A. No.213-K of 2013).
Ghulam Mustafa (in C. A. No.214-K of 2013).
Imdad Ali (in C. A. No.215-K of 2013).
Saphio (in C. A. No.216-K of 2013).
Abdul Majeed (in C. A. No.217-K of 2013).
Wali Muhammad (in C. A. No.218-K of 2013).
Wajid Ali (in C. A. No.219-K of 2013).
Hussain Bahleem (in C. A. No.220-K of 2013).
Sajjid Ali (in C. A. No.221-K of 2013).
Anwar Ali (in C. A. No.222-K of 2013).
Feroz Ahmed (in C. A. No.223-K of 2013).
Ayaz Ali (in C. A. No.224-K of 2013).
Zakir Hussain Sahito (in C. A. No.225-K of 2013).
Muhammad Hayat (in C. A. No.226-K of 2013).
Shakil Ahmed Khauharo (in C. A. No.230-K of 2013).
Fakir Muhammad (in C. A. No.231-K of 2013).
Afzal Ali Pathan (in C. A. No.232-K of 2013).
Qamber Ali Jamro (in C. A. No.233-K of 2013).
Nisar Ahmed (in C. A. No.234-K of 2013).
Syed Morial Shah (in C. A. No.235-K of 2013).
Ahmed Ali (in C. A. No.236-K of 2013).
Roshan Ali (in C. A. No.237-K of 2013).
Muhammad Ali (in C. A. No.240-K of 2013).
Abdul Qadir (in C. A. No.241-K of 2013).
Izhar Ali (in C. A. No.243-K of 2013).
Shabir Ahmed (in C. A. No.244-K of 2013).
Ashique Hussain (in C. A. No.245-K of 2013).
Haq Nawaz (in C. A. No.247-K of 2013).

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Date of hearing: 7th February, 2014.

ORDER

AMIR HANI MUSLIM, J.--- These appeals, by leave of the Court, are directed against the judgments dated 1-8-2013 and 17-9-2013 of the learned Sindh Service Tribunal at Karachi whereby the Service Appeals filed by the respondents were allowed.

2. Facts material for the disposal of the present proceedings are that on 24-4-2008 several vacancies in the Education and Literacy Department, Government of Sindh were advertised in Daily Kawish, Hyderabad. Pursuant to such advertisement, the respondents submitted their applications for appointment and after fulfillment of codal formalities, the E.D.O., who was the competent Authority, in the month of May 2009, issued appointment letters and after completion of formalities, they were appointed.

3. The respondents despite joining of their duties, were not paid salaries, therefore, the respondents filed a Constitutional Petition on 6th July, 2009. Upon service of notice of the Petition the EDO issued back dated Termination Orders, whereby service of all the "appointees, including the respondents were terminated w.e.f. 6th June, 2009. Against the said Termination Orders, the respondents and others filed Constitutional Petition bearing No. D-1759/2009 in the High Court of Sindh, Sukkur Bench. The Petitions were allowed and the Termination Orders were set aside. After the judgment of the learned Sindh High Court (Sukkur Bench), after issuance of the fresh show-cause notices to the respondents and other appointees, the same EDO again terminated the services of the respondents and other appointees in pursuance of the show-cause notices which, according to the respondents, were never served upon them. According to the respondents, the show-cause notices were issued on 19-1-2010 and the Termination Orders were issued on 3-5-2010.

4. Against their terminations, the respondents preferred C.P. No.221 of 2010 before the learned High Court of Sindh, Sukkur Bench, whereby the order in nature of quo warranto was prayed. It was contended before the learned High Court that the office of EDO (Education) Khairpur fell vacant on or about 3-6-2009. The District Co-ordination Officer, Khairpur by an order dated 5-6-2009 allowed Amanullah Bhayo to look after the charge of EDO (Education) Khairpur in addition to his own duties with immediate effect till posting of some other officer by the Government of Sindh. Since then Amanullah Bhayo continued to hold the charge of EDO (Education) Khairpur. It was pleaded before the learned High Court that District Co-ordination Officer did not have the authority to appoint any person either to hold office of EDO (Education) or to discharge the functions of that office, therefore, Amanullah Bhayo was holding office of the EDO without lawful authority. The respondents in the Petition prayed for a writ of quo warranto seeking declaration that the office of EDO (Education) Khairpur was vacant and further prayed that all the acts done and orders passed by Amanullah Bhayo as EDO (Khairpur) be declared void ab initio.

5. The learned High Court, after hearing the parties reserved judgment on 12-4-2010 and on 27-4-2010 had announced the judgment reaching the following conclusion:--

"In view of what has been stated in the foregoing we are of the opinion that a case was made out for issuing a writ of quo warranto. We hold that the Impugned order of the DCO, Khairpur dated 5-6-2009 whereby additional charge of the office of EDO (Education) was given to the respondent, No.3 was without lawful authority. This would ordinarily have led to the petition being accepted, and a declaration that the said office was vacant. However, certain developments have been brought to our attention since we heard the matter and reserved judgment on 12-4-2010. While reserving judgment, we had also directed that the competent authority be asked to take immediate steps to appoint a permanent incumbent to the said office. On 27-4-2010, the learned AAG placed on record certain documents with reference to this part of our order of 12-4-2010. There is firstly a letter dated 14-4-2010 by means of which the respondent No.3 relinquished charge of the office of EDO (Education). There is then a notification dated 15-4-2010 issued under the hand of the Chief Secretary to the Provincial Government by means of which the respondent No.3 was transferred and posted with immediate effect as EDO (Education) in his own pay and scale. Finally there is a "resumption report" dated 19-4-2010 by means of which the respondent No. 3 has confirmed taking charge of the office of EDO (Education) in terms of the notification of 15-4-2010."

6. The learned High Court for the aforesaid reasoning did not issue writ of quo warranto, inter alia, on the ground that Amanullah Bhayo vide Notification dated 15-4-2010 issued by the Competent Authority was assigned charge of EDO (Education) on OPS basis. The said officer on assuming the charge by virtue of the Notification dated 15-4-2010, on 3-5-2010 issued Termination Orders of the respondents. The respondents

preferred Departmental Appeals before the Secretary Education and Literacy Department, but the same were not decided and in the meanwhile respondents preferred C.P.No.D-1(sic.) of 2010 before the learned Sindh High Court challenging their Termination Orders of 3-5-2010. On 18-3-2011, the learned High Court allowed the said Constitutional Petition, which judgment of the learned High Court was challenged before this Court. This Court on 2-12-2011 with the consent of the parties, set aside the judgment of the learned High Court and remanded the matter to the learned High Court to decide the issue of maintainability of the Petition. On remand the learned High Court dismissed the Petition of the respondents, inter alia, on the ground that the Petition was barred under Article 212 of the Constitution. On 21-12-2012, the respondents preferred Service Appeals before the Service Tribunal at Karachi, which appeals were heard and allowed vide impugned judgments dated 1-8-2013 and 17-9-2013. The appellants being aggrieved have preferred these appeals, by leave of the Court.

7. It is contended by the learned Additional Advocate-General Sindh that the learned Sindh Service Tribunal has no powers to condone the delay in filing of the time barred Appeals of the respondents. He further contended that the provisions of sections 5 and 14 of the Limitation Act are inapplicable to the Service Tribunal and in support of his contention has relied upon the judgment of this Court in the case of Furqan Habib and others v. Government of Pakistan and others (2006 SCMR 460) in which it was held that limitation in time-barred Appeals cannot be condoned by the Service Tribunal by resorting to the provisions of Section 14. He further contended that the order terminating the services of the respondents was passed on 3-5-2010 whereas, on 21-12-2012, the Appeals were filed before the learned Service Tribunal, which appeals on the face of it were barred by time. The learned Service Tribunal overlooking the judgment of this Court, referred to hereinabove, has entertained these appeals and condoned the unexplained delay, which alone is sufficient ground to set aside the impugned judgments.

8. The learned Assistant Advocate-General next contended that Amanullah Bhayo was posted by the D.C.O as E.D.O. in his own pay and scale (OPS) and his posting was challenged but in the intervening period the defect was cured and on 15-4-2010 he was appointed as E.D.O on O.P.S basis by the Competent Authority. According to the learned Law Officer, the objection in regard to the appointment of Amanullah Bhayo as E.D.O. was cured on 15-4-2010. Therefore, on 3-5-2010 he being E.D.O. was competent to issue the Termination Orders of the respondents.

9. We have heard the learned Law Officers and have perused the record. The learned Service Tribunal has not condoned the delay in filing of the time barred Appeals by resorting to the provisions of section 5 and or section 14 of the Limitation Act, on the contrary the Tribunal has taken a view that Termination Orders were issued by Amanullah Bhayo, who was not the competent Authority on 3-5-2010, as he was in BS-19 and was posted as E.D.O on O.P.S basis. The Tribunal has proceeded on the premise that since the Termination Orders were issued by an Officer who was in BS-19 and not by an officer of BS-20, therefore, it declared the Termination Orders of the respondents as void and without lawful authority. Consequently, neither bar of limitation would be attracted nor period of limitation would run against such orders. We endorse this view of the learned Service Tribunal.

10. We have also examined the view taken by this Court in the case of Furqan Habib relied upon by the learned Law Officer, which judgment is distinguishable on facts. In the first place, section 6-A of the Sindh Service Tribunals Act, 1973 permits the application of the provisions of sections 5 and 14 of the Limitation Act to the appeals preferred before the Sindh Service Tribunal. Secondly in case of Furqan Habib the original order challenged before the Tribunal was neither a void order nor an order without jurisdiction, therefore, the bar of limitation was applicable in such cases whereas in the case in hand as noticed in the preceding para the termination orders having been issued by an officer not competent in law, therefore, such orders being void, would not attract the bar of limitation.

11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which could authorize the Government or Competent Authority to appointment any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in

the Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers.

12. At times officers possessing requisite experience to qualify for regular appointment may not be available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting charge and current charge basis. It provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule (4) of the afore-referred Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting charge basis can be made, subject to conditions contained in the Rules.

13. We, in the circumstances, hold that Amanullah Bhayo, who was a junior officer of BS-19 amongst his colleagues, as it appears from the record, was not competent even in exigency to be appointed in BS-20 as, E.D.O. on OPS basis, nor was he otherwise competent being an officer working on OPS basis to exercise powers of BS-20 officer as E.D.O. to issue termination orders of the respondents. The Government cannot confer powers of Competent Authority to Amanullah Bhayo, who was not eligible for promotion and otherwise junior amongst the officers of his scale and cadre working in the department.

14. The above are the reasons for our short order dated 7-2-2014, which reads as under:--

"Heard learned Additional Advocate-General Sindh on behalf of the appellants. For the reasons to be recorded separately, the connected appeals are dismissed, however, with the observations that since the respondents have not performed any duty during the intervening period they will not be entitled for the back benefits from the date of their appointment letters till the judgment of the Tribunal dated 1-8-2013. In addition, it is left open for the appellants that they may take fresh appropriate action against the respondents, if they so chose, but strictly in accordance with law and for this purpose impugned judgment of the Tribunal will not come in their way."

MWA/P-5/SC

Appeals dismissed.

2010 S C M R 1301

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J. Ch. Ijaz Ahmed and Ghulam Rabbani, JJ

TARIQ AZIZ-UD-DIN and others: in re

Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009, decided on 28th April, 2010.

(a) Civil Servants Act, (LXXI of 1973)---

---S.9---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Notification S.R.O. 1047(I)/1993, dated 23-10-1993---Promotion---Selection Grade---Basic Scales-21 to 22---Procedure---Use of discretion---Principles---Provisions of S.9 of Civil Servants Act, 1973, mainly deal with promotions up to Basic Scale-21 procedure whereof has been laid under Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Presently rules are not available for promotion to selection grade i.e. from Basic Scale-21 to Basic Scale-22, although in year, 1993 vide Notification S.R.O. 1047 (I)/1993, dated 23-10-1993, such rules were framed but those were rescinded on 4-4-1998---In absence of any rules for promotion to Basic Scale-22, reliance has to be placed on S. 9(2)(a)(b) Of Civil Servants Act, 1973, according to which in case of selection post, selection has to be made on the basis of merit and in case of non-selection post on the basis of seniority-cum- fitness---Promotion to posts, in Basic Scales-20 and 21 and equivalent, under S.9 (2) of Civil Servants Act, 1973, has to be made on the recommendations of Selection Board---For promotions from Basic Scales- 21 to 22 no other criterion has to be taken into consideration except merit---There are no rules for promotion to selection post of Grade-22, meaning thereby that competent authority may exercise discretion which has to be structured in view of the principles laid down in judge made law by full application of mind.

Chairman RTA v. Pak. Mutual Insurance Co. PLD 1991 SC 14; Director Food, N.-W.F.P. v. Madina Flour and General Mills (Pvt.) Ltd. PLD 2001 SC 1; Chief Secretary Punjab v. Abdul Raof Dasti 2006 SCMR 1876; Adbul Wahab v. Secretary, Government of Balochistan 2009 SCMR 1354 and Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 rel.

(b) Discretion---

---Fair and transparent discretion, exercise of---Principles---Action must be based on fair, open and just consideration to decide matters more particularly when such powers are to be exercised on discretion---Arbitrariness in any manner is to be avoided to ensure that action based on discretion is fair and transparent---Discretion is to be exercised according to rational reasons which means that; there be finding of primary facts based on good evidence; and decisions about facts be made for reasons which serve the purpose of statute in an intelligible and reasonable manner---Actions which do not meet these threshold requirements are considered arbitrary and misuse of power---Discretionary power conferred on Government should be exercised reasonably subject to existence of essential conditions required for exercise of such power with the scope of law---All judicial, quasi judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion---Obligation to act fairly on the part of administrative authority has been evolved to ensure rule of law and to prevent failure of justice.

Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101; Mansukhlal Vitaldas Chauhan v. State of Gujarat 1997(7) SCC 622 rel.

(c) Civil Servants Act (LXXI of 1973)---

---S.9---Rules of Business, 1973, Rule. 15 (2) ---Constitution of Pakistan (1973), Art. 184 (3) ---Human rights---Promotion from Basic Scale-21 to 22---Arbitrary procedure---Exercise of discretion by competent authority---Principle of transparency---Summary to Prime Minister---Procedure---Petitioners were civil servants working under Basic Scale-21 and were aggrieved of promotions of respondents from Basic Scale-21 to 22---Validity---It was mandatory under R. 15 (2) of Rules of Business, 1973, that a case should be submitted to Prime Minister for his orders based on self contained, concise and objective summary stating relevant facts or points for decision prepared on the same lines as those prescribed in the rules for summary of

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Establishment etc. ---Secretary Establishment pointed out to Supreme Court that there was no practice prevailing for the last about 60 years for forwarding cases of promotion from Basic Scale-21 to 22 and subject to availability of vacancies, Prime Minister could call for the files for promoting officers and notification was issued of his / their promotion on receipt of directions front Prime Minister by Establishment Division, ,such past practice was followed in the promotion of respondents i.e. mandate of relevant rules was ignored---There was admitted non-adherence to Rules of Business, 1973, and Secretary Establishment sent files without any forwarding letter and cases of all officers totaling 267 were not sent in terms of R.15(2) of Rules of Business, 1973---Due weight was required to be given to Rules of Business, 1973, which had constitutional sanction, whereas while promoting respondents, mandate of law was uncondonably violated---Adopting such arbitrary procedure, not only injustice had been caused to officers who were otherwise senior and also had better case on merits but they had been deprived because there was nothing in black and white before competent authority---Such fact had brought case of petitioners in the area where discretion so exercised by competent authority could not be said to be in consonance with well known principle of fair play as cases of those officers who were not promoted their files were not before him, along with self-contained note by Secretary Establishment in terms of R. 15(2) of Rules of Business, 1973---To ensure justice and openness in view of rule of law, it was obligatory upon the competent authority to decide each case on merit taking into consideration the service record of the officers in Basic Scale-21 who were eligible for promotion to Basic Scale-22---Such aspect of the matter required application of mind based on consideration and determination of merit in the light of material explicitly showing as to why officers who had been left out were not found to be competent / below in merit in comparison to those promoted to Basic Scale-22---Such consideration of case and determination of merit for parity of treatment had become all the more necessary and in absence of considering candidature of left out officers, it would alone be tantamount to pick and choose and there was no transparency in exercise of discretion by competent authority---Manner in which promotions in civil service had been made, might tend to adversely affect existence of such organ---Honesty, efficiency and incorruptibility were sterling qualities in all fields of life including Administration of Services and such criteria ought to have been followed---Respondents were promoted in complete disregard of the law causing anger, anguish, acrimony, dissatisfaction and diffidence in ranks of services which was likely to destroy service structure---Although petitioners had no right to be promoted yet in accordance with S. 9 of Civil Servants Act, 1973, they were, at least, entitled to be considered for promotion---Right contemplated under S.9 of Civil Servants Act, 1973, was neither illusory nor a perfunctory ritual and withholding of promotion of an officer was a major penalty in accordance with Civil Servants (Efficiency and Discipline) Rules, 1973, therefore, consideration of an officer for promotion was to be based not only on relevant law and rules but also to be based on some tangible material relating to merit and eligibility which could be lawfully taken note of---Supreme Court set aside notifications of promotion of respondents and declared those of no legal consequences---Supreme Court directed competent authority to 'consider cases of all officers holding posts in Basic Scale-21 afresh in view of the observations made by Supreme Court---Respondents were not entitled for benefits, perks and privileges---Supreme Court recommended to ensure fairness, justness and the rules rescinded on 4-4-1998 to be re-enacted---Petition was allowed.

Lahore Development Authority v. Shamim Akhtar 2003 MLD 1549; Adil Hamid v. Azad Jammu and Kashmir Government 1991 PLC (CS) 1195; Muhammad Anis v. Abdul Haseeb PLD 1994 SC 539; Fazali Rehmani v. Chief Minister, N.-W.F.P. PLD 2008 SC 769; Tanvir Shaukat v. District and Sessions Judge, Narowal 2009 SCMR 764; Zia Ullah Khan v. Government of Punjab PLD 1989 Lah. 554; Zubai Ahmad v. Shahid Mirza 2004 SCMR 1747; Muhammad Zafeer Abbasi v. Government of Pakistan 2003 PLC (CS) 503; Civil Service Unions (CCSU) v. Minister for the Civil Service (1984) 3 All ER 935; R. v. Secretary of State [1985] 1 All ER 40; Pakistan Muslim League (N) v. Federation of Pakistan PLD 2007 SC 642; Sajjad Ahmed Javed Bhatti v. Secretary, Establishment Division 2009 PC (CS) 981; Fundamental Law of Pakistan by A.K. Brohi; Muhammad Yousaf v. Abdul Rashid 1996 SCMR 1297; Ghuman Singh v. State of Rajasthan (1971) 2 SCC 452; Union of India and others v. Lt.-Gen. Rajendra Singh Kadyan and another (2006) 6 SCC 698; R (ProLife Alliance) v. BBC (2003) 2 All ER 977; Zahid Akhtar v. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others PLD 1995 SC 530; Federation of Pakistan through Secretary, Planning and Development Division, Islamabad v. Muhammad Akram and others 1995 SCMR 1647 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997 (7) SCC 622 ref.

Chairman RTA v. Pakistan Mutual Insurance Co. PLD 1991 SC 14; Aman Ullah Khan V. Federal Government of Pakistan PLD 1990 SC 1092 and Abu Bakar Siddique v. Collector of Customs 2006 SCMR 705 rel.

(d) Civil service---

---Promotion---Principle---Promotion is not a right but an officer deserves that his case should be considered for promotion in accordance with law.



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(e) Civil Servants Act (LXXI of 1973)---

---S. 9(2)(a)---'Merit'---Applicability---Interpretation of word 'merit' includes eligibility as well as academic qualifications---Merit includes limitation prescribed under law.

Miss Abida Shabqadar v. Selection Committee 1989 SCMR 1585 rel.

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(f) Civil Servants Act (LXXXI of 1973)---

---S. 9(2)(a)---Promotion to selection post---Procedure---When promotion is to be made to a selection post, it needs to be purely on merit---In case there is a tie regarding meritorious past record, credibility and confidence among the officers then seniority plays its role.

State of West Bengal v. Manas Kumar Chakrabarti AIR 2003 SC 524 rel.

(g) Civil Servants Act (LXXI of 1973)---

---S.9---Constitution of Pakistan (1973), Arts. 4 & 25---Promotion of junior officers---Effect---Grievance of petitioners was that respondents who were junior to them were promoted to Basic Scale-22, and they were not even considered for promotion---Validity---If left out officers were eligible for promotion, yet not promoted and juniors were promoted, the same amounted to glaring violation of command of Art.4 of the Constitution according to which it was an inalienable right of individual to be dealt with in accordance with law---If officers were considered for promotion having equal merit and eligibility, then seniority was to play a decisive role and ought to have been adhered---Such principle had not been followed and cases of both types of officers were not measured in the same scale to follow dictates of Art.4 of the Constitution, rule of law as well as due process of law.

(h) Constitution of Pakistan (1973)---

---Art. 25---Equality of citizens---Reasonable classification---Principle of intelligible differentia---Applicability---Provision of Art.25 of the Constitution has guaranteed equality of citizens---Denying such protection in peculiar circumstances of ease on the basis of reasonable classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out---Intelligible differentia must have rational nexus to the object sought to be achieved by such classification.

Dr. Mobashir Hassan v. Federation of Pakistan and others PLD 2010 SC 265 rel.

(i) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R.8-B---Appointment on acting charge basis---Object and scope---Vested right---Appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from R.8-B of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---In case where appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post, on acting charge basis, the most senior officer otherwise eligible for promotion in the cadre or service as the case may be.

(j) Civil Servants Act (LXXI of 1973)---

---S.9---Promotion---Ignoring senior officer---Principle of good governance---Posting a junior officer to hold charge of senior post, ignoring seniors who were eligible for promotion, does not advance object of achieving good governance.

(k) Constitution of Pakistan (1973)---

---Arts. 4, 5 & 25---Good governance---Object of good governance, achieving of---Principle---Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind---Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different articles including Arts. 4 and 25 of the Constitution---Once it is accepted that the Constitution is supreme law of country, no room is left to

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allow any authority to make departure from any of the provisions of law and rules made thereunder---By virtue of Arts. 4 and 5 (2) of the Constitution, even Chief Executive of the country is bound to obey command of the Constitution and to act in accordance with law and decide issues after application of mind with reasons.

Federation of Pakistan through Secretary, Establishment Division v. Tariq Pirzada 1999 SCMR 2744 and Ch. Zahur Ilahi v. Mr. Zulfikar Ali Bhutto PLD 1975 SC 383 rel.

(l) Civil Servants Act (LXXI of 1973)---

---S. 9(2)(a)---Promotion to selection post---Competent authority, obligation of---Competent authority was duty bound and obliged to consider merit of all eligible candidates while putting them in juxtaposition to find out meritorious amongst them otherwise one of the organs of the State i.e. Executive could not survive as an independent organ which is command of the Constitution.

(m) Civil Servants Act (LXXI of 1973)---

---Preamble---Role of Executive (Bureaucracy)---Scope---Under trichotomy of powers, the Executive (Bureaucracy) has to play the most important role for well being of general public---Although, bureaucrats are not representing any class of masses but whole structure of government depends upon efficient and competent officers who matter in making policies which are ultimately approved by ministers etc. and if for such purpose selection of officer is made following the principle to determine merit are not employed, running of government on the basis of good policies would ultimately affect general public.

(n) Constitution of Pakistan (1973)---

---Art. 184 (3) ---Human rights case---Maintainability---Petitioners were aggrieved of promotion of respondent from Basic Scale-21 to 22---Such promotions were assailed before Supreme Court in exercise of powers under Art. 184(3) of the Constitution---Plea raised by government was that few persons had approached Supreme Court by sending miscellaneous applications which have been treated as petitions under Art. 184(3) of the Constitution, whereas majority of the officers had accepted the decision, therefore, petitions be dismissed directing aggrieved party to avail legal remedy permissible under law, instead of invoking constitutional jurisdiction of Supreme Court---Validity---Exercise of discretion contrary to settled principles had not only affected the left out officers but had left a far reaching adverse effect upon the structure of civil servants; be in the employment of Federal or Provincial Governments, autonomous and semi-autonomous bodies etc.---If the decision of competent authority under challenge was not examined keeping in view the constitutional provisions and law as well as judgments on the subject, the competent and efficient officers who had served honestly during their service career, would have no guarantee of their future service prospects---Consequently such actions were also likely to affect good governance as well as framing of policies in welfare of public and State---To assure public at large, more particularly the civil servants their fundamental rights would be protected---Supreme Court exercised jurisdiction under Art. 184 (3) of the Constitution in circumstances.

All Pakistan Newspapers Society v. Federation of Pakistan PLD 2004 SC 600 distinguished.

(o) Civil service---

---Promotion---Principle of merit---Effect---Good governance is largely dependent upon upright, holiest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to bureaucracy---Civil service is backbone of administration and purity of administration to a large extent depends upon purity of services---Such purity can be obtained only if promotions are made on merit in accordance with law and Constitution, without favouritism or nepotism---Institution is destroyed if promotions / appointments are made in violation of law.

(p) Constitution of Pakistan (1973)---

---Art.4---Word 'law'---Scope---Word 'law' is of wider import and in itself mandatorily cast duty upon every public functionary to act in the matter justly, fairly and without arbitrariness.

Muhammad Akram Sheikh, Senior Advocate Supreme Court assisted by Syed Sajeel Sheharyar, Advocate; M. Ikram Chaudhry, Advocate Supreme Court; Dr. Muhammad Aslam Khaki, Advocate Supreme Court (in HRC

9504-G & 13936-G of 2009); Afnan Karim Kundi, Advocate Supreme Court; Haider Hussain, Advocate Supreme Court; Saleemullah Khan (in HRC No. 14309-G 2009) for Applicants.

Nemo for Applicants (in HRC No. 14306-7/G of 2009).

Anwar Mansoor Khan, AGP on Court notice.

Abdul Hafeez Pirzada, Senior Advocate Supreme Court, Mian Hassan Aurangzeb, Advocate Supreme Court, M.S. Khattak, Advocate on-Record, Ismail Qureshi, Secretary, Munir Ahmed, Senior JS., and Syed Mubashar Raza, JS. for the Established Division.

Ishtiaq H. Andrabi, Additional Secretary (A), Shair Bahadur Khan, Legal Advisor for Foreign Office.

Athar Tahir, Naguibullah Malik, Abdul Ghafar Soomro, Maj. (Retd.) Qamar Zaman, Imtiaz Hussain Qazi, Ishtiaq Ahmed Khan, Shahid Rashid, Nasir Mahmood Khan Khosa, Javed Iqbal, Nazar Hussain Mahar, Junaid Iqbal, M. Sami Saeed, Imtiaz Inayat Elahi, Javed Mehmood, Ghulam Ali Pasha, Khawaja Khalid Farooq, Syed Shabbir Ahmed, Tariq Masood Khan Khosa, Dr. Wasim Kausar, Tariq Saleem Dogar, Syed Jawed Ali Shah Bukhari, Muhammad Zafeer Abbasi, Jaweed Akhtar, Dr. Inamullah Khan, Khalid Idrees, Neelam S. Ali, Abdul Shafiq, Ahmed Mehmood Zahid, Batool Iqbal Qureshi, Ghulam Rasool Ahpan, Gul Muhammad Rind, Anisul Hassnain Musavi, Agha Sarwar Qizalbash, Ghalibuddin, Ayub Tarin, Asif Usman Khan, Mansoor Sohail and Haroon Shaukat Promoted Officer on Court notice.

Dates of hearing: 10th and 26th November, 2009, 7th, 20th, 26th, 28th 29th January, 2010 and 15th February, 2010.

JUDGMENT

CH. IJAZ AHMED. J.---Facts in brief, relevant for disposal of instant HR Cases, are that one Mr. Tariq Aziz-ud-Din from the Foreign Service Group, moved an application dated 6th November, 2009, addressed to Chief Justice of Pakistan, stating therein that Government of Pakistan has made promotions of officers of various occupational groups, including Foreign Service group to which he also belong, from BS-21 to BS-22, in total violation of Constitutional basis and principles of merit, seniority and fair play. He added in the application that the competent authority has no arbitrary power under the law to pick and choose on his whims although he sits as head of Selection Board. It is averred by him that in this way his fundamental right to expect a fair career progression has been violated as his juniors have been promoted while superseding him without any justification. The application was registered as HR Case No. 8340-G/2009.

2. Initially, the comments on the above said application were called from the Secretary, Ministry of Foreign Affairs, Government of Pakistan, however, ultimately the matter was ordered to be fixed in Court with notice to the Attorney-General for Pakistan, Secretaries, Establishment and Foreign Affairs Divisions, applicant and all those officers who had been superseded as well as to the officers promoted by the Federal Government to be served through Secretary Establishment. In the meantime, some of the other affectees also approached the Court by way of filing separate applications, which were also registered as HR Cases, titled above and clubbed together.

3. Subsequently, Mr. Muhammad Akram Sheikh, Senior Advocate Supreme Court, Mr. M. Ikram Chaudhry, Advocate Supreme Court, Dr. Muhammad Aslam Khaki, Advocate Supreme Court, Mr. Afnan Karim Kundi, Advocate Supreme Court and Mr. Haider Hussain, Advocate Supreme Court appeared on behalf of the applicants/officers who have not been promoted, whereas Mr. Abdul Hafeez Pirzada, Senior Advocate Supreme Court appeared on behalf of Federation of Pakistan through Establishment Division. Likewise, Mr. Anwar Mansoor Khan, Attorney-General for Pakistan appeared on Court's notice. On the other hand the officers promoted to BS-22 except few also appeared in response to the notices.

4. Mr. Muhammad Akram Sheikh, Senior Advocate Supreme Court appearing on behalf of the petitioners argued that:--

(a) In terms of Sections 9(1)(b) and 9(2) of Civil Servants Act, 1973 [hereinafter referred to as 'CSA, 1973'], the Civil Servants (Appointment and Tenure of Post in BPS-22) Rules, 1993. [hereinafter referred to as 'CSR, 1993'] were framed but these rules were rescinded on 4th April, 1998. In such situation, it is the responsibility of the Government to frame rules with regard to terms and conditions

Establishment Division under the Rules of Business, to enable it to exercise discretion fairly and justly, has not been rendered. Record produced before us reflects that two officers, namely, Mr. Jaweed Akhtar and Mr. Moeen-ul-Islam Bokhari from Secretariat Group and National Assembly Secretariat Group, respectively, were promoted. Of these two promoted officer, Mr. Jaweed Akhtar, was working in NLC and was inducted on 7.11.2009 in Secretariat Group, on the same day was promoted to BS-21 and then awarded promotion in BS-22 considering him to be an officer of Secretariat Group and almost same was the position of Mr. Moeen-ul-Islam Bokhari. What could else be the example of non-application of mind and non adherence to the rule as well as the due process of law.

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26. Learned Attorney General and learned counsel for the Federation also emphasized that majority of officers of BS-21 who now have been promoted to BS-22 were holding acting charge of different divisions as Secretaries, etc. and competent authority had an opportunity to watch their performance, therefore, it had rightly considered them for promotion as against the left out officers whose performance, though not said to be blemished, could not be watched. We are not impressed with these arguments for, legally speaking, appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 reproduced below:

"8-B (1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(2) *[Omitted].

(3) In the case of a post in basic pay scales 17 to 22 and equivalent, reserved under the rules to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer drawing pay in basic pay scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Central Selection Board, as the case may be, save in the case of post in basic pay scale 22 and equivalent.

(6) Acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(7) Acting charge Appointment shall not confer any vested right for regular promotion to the post held on acting charge basis."

A careful perusal of the above rule reflects that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. In the instant case, the officers who were holding the post on acting charge basis were not all senior to those of affected officers and moreover it is quite evident that even in their cases, holding the acting charge under whatever circumstances, shall not confer any vested right for regular promotion.

27. It was further contended by the learned Attorney General that Chief Executive/competent authority was to select his team with the object in view to ensure the good governance in the country. Suffice to observe as is pointed out hereinabove, as well, that posting a junior officer to hold the charge of a senior post, ignoring seniors who are eligible for promotion, does not advance the object of achieving good governance because the rules framed on the subject, noted hereinabove, are not redundant in any manner, therefore, same- need to be respected and followed accordingly. It is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different articles including Articles 4 and 25. Once it is

accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. By virtue of Articles 4 and 5 (2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution and to act in accordance with law and decide the issues after application of mind with reasons as per law laid down by this Court in various pronouncements [Federation of Pakistan through Secretary, Establishment Division v. Tariq Pirzada 1999 SCMR 2744]. It is also a settled law that even Chief Executive of the country is not above the Constitution [Ch. Zahur Ilahi v. Mr. Zulfikar Ali Bhutto PLD 1975 SC 383]. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to find out the meritorious amongst them otherwise is one of the organs of the State i.e. Executive could not survive as an independent organ which is the command of the Constitution. Expression 'merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made, for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, N.-W.F.P. v. Messrs Madina Flour and General Mills (Pvt.) Ltd. PLD 2001 SC 1]. Equally, discretionary power conferred on Government should be exercised reasonably subject to existence of essential conditions, required for exercise of such power within the scope of law. All judicial, quasi judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and seven instruments which have already been referred to above regarding exercise of discretion. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of justice [Mansukhlal Vitaldas Chauhan v. State of Gujrat (1997 (7) SCC 622)].

28. We may observe here that it is not the case of few individuals who have been promoted or left out, the questions for consideration raised in this case are of far-reaching effect. Essentially, under the trichotomy of the powers, the Executive (Bureaucracy) has to play the most important role for well being of general public. Although, they are not representing any class of masses but whole structure of the government depends upon the efficient and competent officers who matter in making policies which are ultimately approved by the Ministers etc. and if for this purpose the selection of officers is made following the principle to determine the merit are not employed, the running of government on the basis of good policies would ultimately affect the general public as in this matter it is no body's case that the officers who have been left out are not eligible for promotion to BS-22. Thus they stand at par with those who have been promoted and depriving them to enjoy the higher status of a civil servant would indirectly affect smooth functioning of the government on account of despondency developed amongst the officers, who always have stood by law and worked hard but ultimately are deprived of their legitimate right of promotion.

29. Needless to observe that when we talk about the public interest and the welfare of the State, we definitely have in our minds the concept of rule of law as well as access to justice to all as is enshrined in our Constitution.

30. Learned counsel for the Federation and Attorney General for Pakistan were of the opinion that as few persons have approached this Court by sending Misc. applications which have been treated petition under Article 184 (3) of the Constitution whereas majority of the officers have accepted the decision, therefore, for this reason petitions may be dismissed directing the aggrieved party to avail legal remedy permissible under the law, instead of invoking constitutional jurisdiction of this Court. Reliance was placed on All Pakistan Newspapers Society and others v. Federation of Pakistan and others PLD 2004 SC 600. We are not impressed with this argument; as well, for the judgment cited by the learned counsel for the Federation is not relevant to the issue involved because the exercise of discretion contrary to settled principles has not only affected the left out officers but has left a far-reaching adverse effect upon the structure of civil servants --- be in the employment of the Federal or the Provincial Governments, autonomous and semi-autonomous bodies, etc. --- and if the decision of the competent authority under challenge is not examined keeping in view the Constitutional provisions and the law as well as the judgments on the subject, the competent and efficient officers who have served honestly during their service career, would have no guarantee of their future service prospects. Consequently, such actions are also likely to affect the good governance as well as framing of policies in the welfare of the public and the State. Therefore, to assure the public at large, more particularly the civil servants in this case that their fundamental rights will be protected, this Court is constrained to exercise jurisdiction under Article 184(3) of the Constitution.

31. It is contended by the learned counsel appearing for the Federation that the officers who have been promoted to BS-22 by the competent authority had been promoted following the provisions of Articles 27 (1), 3.4 and 37 (F) of the Constitution as an effort has been made to maintain gender balance. It may be noted that



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ANNEX B

ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

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Appointment against higher posts in own pay scales.

Appointments in higher grades.

A number of cases have come to notice where Ministries/Divisions and Provincial Governments have made appointments of officers serving under them to posts in higher grades without the prior approval of the competent authority or going through the prescribed selection procedures. This grant of higher appointments to junior officers against senior posts amounts to accelerated promotion in view of the decision given by the Supreme Court of Pakistan in the case of Government of Pakistan versus Qazi Abdul Karim. In future such vacancies will be reported to the Establishment Division so that eligible officers may be considered and recommended for promotion by the Competent Authority in accordance with the Rules.

2. The President has been pleased to direct that appointments of officers of lower grades to posts in higher grades without going through the prescribed selection process, must cease with immediate effect. The Ministries/Divisions and Provincial Governments can only fill vacancies in a particular grade by officers of the same grade and officers in a junior grade will not be appointed against a vacancy in a higher grade. If it is necessary to do so due to exigencies of service, the post should be downgraded with the approval of the Establishment Division. When making such a request it will be clearly stated why the vacancy should not be referred to the Central Selection Board/High Level Selection Board/appropriate Departmental Promotion Committee for the promotion of an eligible officer to fill the vacancy in the appropriate grade in accordance with the rules.

(Authority: O.M No.2/25/69-C.I, dated 31.7.79, circulated by S&GAD NWFP vide letter No.SORI(S&GAD)1-29/75(KW), dated ~~20.8.79~~)

Appointment in Higher Grades/Posts.

Instances have come to notice of Federal Government where civil servants have been appointed to higher posts and subsequently these posts have been downgraded retrospectively and without the prior approval of the competent authority. This is not in keeping with the Establishment Division OM No.2/25/69-CI, dated 31st July, 1979 circulated vide S&GAD circular letter No.SORI (S&GAD)1-29/75(KW), dated 20th August, 1979. It is, therefore, reiterated that whenever a post is required to be downgraded due to exigencies of service, it may please be referred to this Department for approval.

2. Besides, all cases in which action may have been taken in contravention of the instructions issued on the subject may please be referred to the S&GAD for final orders.

(Authority: Letter No.SORI(S&GAD)1-29/75, dated 14.9.1985)

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Appointment in Higher Grades/Posts.

Instances have come to the notice where civil servants in lower grades have been appointed to higher posts but the posts have not been downgraded with the result that the concerned civil servants come up with requests for promotion benefits in view of the decision given by the Supreme Court of Pakistan in the case of 'Government of Pakistan Versus Qazi Abdul Karim'. This is in contravention of the above instructions which is not desirable administratively.

2. It appears that either the aforesaid instructions have been lost sight or these instructions have not been brought to the notice of all concerned. It is, therefore, re-iterated that the Provincial Government can only fill vacancies in a particular grade by officers of the same grade and officers of junior grade will not be appointed against a vacancy in a higher grade. If it is necessary to do so, due to exigencies of service, the post should be downgraded with the approval in the first instance of the S&GAD who will seek approval of the Finance Department.

3. This issues with the concurrence of Finance Department.

(Authority: Letter No. SORI(S&GAD)1-29/75, dated 25.2.1986.)

Appointment in Higher Grades/Posts.

The President directed that appointment of officers of lower grades to posts in higher grades without going through the prescribed selection process must cease and that vacancies in a particular grade shall only be filled by officers of the same grade. It has been reported that these instructions are not being followed by some of the departments and Civil Servants in lower grades continue to be appointed against posts in higher scales without downgrading them.

2. While replying to Supplementary question on 21st October, 1987, the Chief Minister, NWFP was pleased to give an assurance to the Provincial Assembly to the effect that as per instructions already issued by Government to all Departments, no officer in lower grades shall henceforth be posted against vacancies in higher grades and that all such posts shall in future be filled in on regular basis by way of promotion or through initial recruitment, as the case may be, in accordance with the prescribed manner.

3. I am, therefore, to request that the above instructions may kindly be brought to the notice of all concerned once again and that they may be directed to abide by these instructions in letter and spirit.

(Authority: Circular letter No. SORI(S&GAD)1-29/75, dated 19.11.1987)

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Appointment against higher post

A point has been raised by the District Accounts Officer, Mansehra whether a higher post can be filled in for indefinite period by appointment of an incumbent holding lower post without having relevancy to the nature of duty and basic qualification of the post etc or otherwise?

2. In this connection attention is invited to the Government of NWFP S&GAD's Circular letter No.SORI(S&GAD)1-29/75(A), dated 5th July,1994 wherein the position has fully been explained. However, the point has carefully been re-examined in the Finance Department. At the very outset it is made clear that for all intents and purposes, the NWFP Civil Servants Act, 1973 being the latest instrument, duly approved by the NWFP Provincial Assembly and the NWFP Civil Servants (Appointment, Promotion & Transfer), Rules,1989 which have been framed under Section 26 of Act ibid have to be followed in the matter of appointments.
3. Under Section 5 of the NWFP Civil Servants Act,1973, the appointment to a Civil Service of the Province or to a post in connection with the affairs of the Province shall be made in the prescribed method by the Governor or by a person authorised by the Governor on that behalf.
4. Under Rule 3 (2) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules,1989,the method of appointment, qualifications and other conditions applicable to a post shall be such as laid down by the department concerned in consultation with Services & General Admn. Department and Finance Department.
5. Under Rule 10(3) of the above mentioned Rules, a candidate for initial appointment to a post must possess the educational or technical qualifications and experience.
6. The appointment by initial recruitment to a higher post or to a different post has to be made strictly in the prescribed manner and any deviation would not be in accordance with law and rules on the subject. The phrase "adjustment" is also not covered under the above rules. Moreover, an opportunity of appointment against a higher post is available to serving Government servants and they in accordance with the provisions contained in Rule 9 of the NWFP Civil Servants (Appointment, Promotion and Transfer), Rules,1989 can be appointed on Acting Charge or Current Charge basis.
7. In the circumstances; the reply to the point as raised in para-1 above that whether a higher post can be filled in for indefinite period by appointment of an incumbent holding lower post without having relevancy to the nature of duty and basic qualification of the post etc is in negative.

(Authority: Finance Department's Circular letter No.FD/PRC-5-1/96-97, dated 29.4.97 and re-circulated by S&GAD vide letter No.SORI(S&GAD)1-29/75(B), dated 10.5.1997)

Unauthorised appointments to higher posts.

In continuation of Establishment Division's O.M No.2/25/69-C.I, dated 31.7.1979, the undersigned is directed to say that it has been observed with regret that despite repeated instructions issued by the Establishment Division regarding appointment of Government servants against higher posts other than in accordance with rules and prescribed procedure,

Ministries/Divisions and Departments of the Federal Government and the Provincial Governments (in the case of officers belonging to Occupational Groups controlled by the Establishment Division) continue to make appointments to higher posts occasionally in disregard of the above instructions. Officers appointed to higher posts without going through the prescribed selection process and approval of the competent authority claim pay and allowances of the higher posts on the basis of judgements of the Federal Service Tribunal and the Supreme Court of Pakistan in a number of such cases. This places the Government in an awkward position as pay and allowances of the higher posts have to be allowed to individuals who have not been regularly promoted and who are some time not even qualified or eligible for promotion. It also causes heart burning and resentment among their seniors who were serving elsewhere or were bypassed at the time of making such irregular appointments.

2. While such irregular appointments are claimed to be made in public interest and under unavoidable circumstances, it has once again to be emphasized that appointments to higher post in disregard of the prescribed rules and procedure should be avoided under all circumstances. Various provisions already exist in the rules for making appointments on acting charge, current charge and additional charge basis, to tide over temporary difficulties. It is therefore again reiterated that in future appointments against higher posts should only be made either on a regular basis in the prescribed manner, or on acting charge or current charge basis in accordance with the provision of Civil Servants (Appointment, Promotion & Transfer), Rules, 1989 and relevant instructions issued by the Government from time to time.
3. Disregard of the above instructions would be viewed seriously and may result in bringing the matter to the notice of the Prime Minister.

(Authority: Estt: Division OM No. 14/4/86-R.I, dated 2.5.1988 circulated by NWFP vide Circular letter No. SORI(S&GAD)1-29/75, dated 23.5.1988)

Unauthorised Appointments to Higher Posts.

This Department's Circular letter of even number dated 23.5.1988, on the subject cited above, which clearly provides that the appointments against the higher posts should be made in the manner prescribed in the rules for those posts. Notwithstanding this, instances have come to the notice that un-authorized appointments to higher posts without going through the prescribed selection process or obtaining approval of the competent authority are being made by Provincial Government Departments. This creates embarrassing position when the officers concerned prefer claim for pay of the higher posts.

2. I am directed to request you once again to strictly follow the instructions as referred to above while making appointments against higher posts. In future, no claim of pay of higher post in cases of un-authorized appointment will be considered by S&GAD.

(Authority: Circular letter No. SORI(S&GAD)1-29/75(A), dated 13.2.1993)

Irregular Appointments to various Posts/Services

NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and other ancillary instructions issued by the Provincial Government provide that initial appointments

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to posts/services in various Departments, Attached Departments and subordinate offices shall be made keeping in view the following:-

- (1) A selected candidate must possess the qualifications and experience prescribed for the post under the relevant rules;
- (2) The vacancies in Grades 5 and above should be advertised in leading newspapers;
- (3) The appointment is to be made on the recommendations of a broad based prescribed Departmental Selection Committee;
- (4) The zonal allocation formula prescribed vide S&GAD's Notification No.SOS.III(S&GAD)3-39/70, dated 2nd October, 1973 as amended from time to time has to be followed;
- (5) The selection for appointment should be made with regard to the criteria for initial recruitment as laid down by the Government from time to time; and
- (6) An overage person should not be selected and appointed when a sufficient number of qualified and within age candidates are available.

2. It has, however, been observed from the report of the Committee appointed by the Government to probe the cases cited as subject that in almost all the departments, appointments to the various posts were made without application of the provisions of the relevant Service Rules and observance of the instructions issued thereunder.

3. It has, therefore, been decided by the Provincial Government that all appointments, promotion will, in future, be made by the competent authorities only after strictly observing all requisite codal formalities and the provisions of Rules of Business, 1985 in general and the sub-rules (5) and (6) of Rule 5 in particular, are strictly observed by all concerned in future.

4. It is requested to please ensure that all concerned abide by the aforesaid decision both in letter and spirit.

(Authority:-S&GAD's letter No.SORI(S&GAD)1-73/88, dated 23rd October, 1988).

Appointment on Acting Charge Basis.

This Department Circular letter No.SORI(S&GAD)1-206/74, dated 15th August, 1981, as amended vide this Department's letter of even number dated 17th October, 1984 and 1st December, 1987, on the subject cited above and to say that in partial modification of the said orders it has been decided that the service rendered on acting charge basis in respect of appointments falling under rules 8-B(1) and 8-B(3) of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 count in the pay scale applicable to the post for the purpose of accrual of increments, subject to the fulfillment of the following:-

- i) In case of acting charge appointments to posts carrying BPS-18, the incumbents shall have completed 5 years service in BPS-17.
- ii) In case of acting charge appointments to posts carrying BPS-19 and above the incumbents shall have completed the prescribed length of service for respective posts as under:-
 - a) Posts in BPS-19 12 years service in BPS-17 and above.
 - b) Posts in BPS-20 17 years service in BPS-17 and above.
 - c) Posts in BPS-21 22 years service in BPS-17 and above.

Provided that:-

- i) Where initial appointment of a person not being a person in Government service takes place in a post in BPS-18, 19 or 20, the length of service specified in this Department letter No.SORI(S&GAD)1-29/75, dated 23.2.1981 shall be reduced by the following periods:

<u>First appointment in</u>	<u>Reduced by</u>
BPS-18	5 years.
BPS-19	12 years.
BPS-20	17 years.

- ii) Where initial appointment of a person already in Government service takes place, on recommendations of the Public Service Commission, in a post in BPS-18, 19 or 20, the length of service specified in above letter shall be reduced by the periods specified in proviso (i).

2. The above decision shall be effective from the First January 1985. However, in cases of acting charge appointments made during the period from 12.1.1981 to 31.12.1984, the increments shall be restored from the due dates but no arrears due on account of restoration of increments prior to 1.1.1985 shall be allowed.

3. This issues with the concurrence of Finance Department.

(Authority: Circular letter No.SORI(S&GAD)1-206/74(IV), dated 17.2.1988)

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Posting of Junior Officers on Posts in Higher Scale

This Department's Circular letter No.SORI(S&GAD)1-29/75(A), dated 13.2.1993, on the subject noted above and to state that it has been noticed that certain Provincial Government Departments are resorting to the practice of posting officers in a lower scale on posts in higher scales. This practice is against the provisions of NWFP Civil Servants Act, 1973 and rules made thereunder as well as the instructions of the Establishment Division reproduced below:-

"The grant of higher appointments to junior officers against senior posts amounts to accelerated promotion in view of the decision given by the Supreme Court of Pakistan in the case of Government of Pakistan Versus Qazi Abdul Karim. The Ministries/Divisions or Provincial Governments can only fill vacancies in a particular grade by officers of the same grade, and officers in a junior grade will not be appointed against a vacancy in a higher grade".

2. It may be pointed out that in the light of rule 9 of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the methods prescribed for posting a junior officer to a higher post are restricted to the following only:-

i) ACTING CHARGE APPOINTMENT AGAINST A HIGHER POST

Where the senior most officer in a cadre is otherwise fully eligible for promotion but does not possess the specified length of service, the competent authority may appoint him to the higher post on acting charge basis, but only on the recommendation of Departmental Promotion Committee/Selection Board and subject to the condition that such officer lacks the prescribed length of service not more than (one year).

ii) CURRENT CHARGE APPOINTMENT OF A HIGHER POST

Only the senior-most officer of a cadre can be given current charge appointment of a higher post with the approval of the competent authority. However, this can only be an arrangement upto a maximum of six months.

iii) ADDITIONAL CHARGE APPOINTMENT OF AN EQUIVALENT POST

An officer can be given the additional charge of a second post but only of a post in an equivalent grade, upto a period of six months by the competent authority.

3. Adherence to the above rules is a legal requirement so that the actions taken by officers are not held at any stage to be irregular. Also, appointments in violation of the rules constitute administrative indiscipline.

4. I am, therefore, directed to request that all such cases of irregular appointments be reviewed and ensure not to resort to such appointments that violate the provisions of the Civil Servants Act and the statutory rules framed thereunder.

5. I am further directed to request that these instructions may be brought to the notice of all concerned for strict compliance.

(Authority: Circular letter No.SORI(S&GAD)1-29/75(A), dated 5.7.1994).

DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

41

OFFICE ORDER

Rt/19

The relieving order dated 09.10.2015 in respect of Mr. Muhammadullah, Head Clerk Agency Surgeon Office Mohmand at Ghallanai has been suspended by the Khyber Pakhtunkhwa Service Tribunal vide appeal No. 61/2016 dated 10.02.2016.

Therefore, the Agency Surgeon Mohmand is directed to implement the court decision in letter and spirit.

-- Sd.....

Director Health Services,
FATA, Peshawar


No. 2417-19 /DHS/FATA/Admn

Dated 7 /03 /2016

Copy forwarded to the:-

1. Agency Surgeon Mohmand at Ghallanai.
2. Agency Accounts Officer Mohmand at Ghallanai.
3. Official concerned.

For information and necessary action.


04/3/16

Director Health Services,
FATA, Peshawar

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1828 /ST

Dated 2 / 8 / 2017

To


The Agency Surgeon,
Government of Khyber Pakhtunkhwa,
Mohmand Agency at Ghalanai.

Subject: -

JUDGMENT IN APPEAL NO. 61/2016, MR. MUHAMMAD ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 25.07.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 61/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 789

Dated 02-10-2017

Muhammadullah
Assistant/Head Clerk.....Applicant/ Appellant

Versus

The Addl: Chief Secretary FATA,
FATA Secretariat, Peshawar and 03 others Respondents

Application for correction in judgment dated 25.07.2017 out of Service Appeal No.61/2016 under Rule-27 of Khyber Pakhtunkhwa Service Tribunal Rules-1974 read with Section-7 of Service Tribunal Act-1974 and further read with Section 152 & 153 of the Civil Procedure Code 1908.

Respectfully Sheweth,

1. That the above titled appeal was instituted on 18.01.2016 before this Hon'ble Tribunal and was later on decided vide judgment dated 25.07.2017 (*Annex:-A*).
2. That of course due to rush of work and loss of sight, there occurred some clerical mistake in the last Para No.6 of the said judgment which is reproduced as below:-

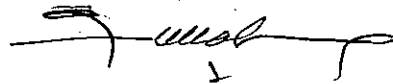
"In view of the foregoing, the present appeal is accepted and the impugned order dated 07.01.2014 is set aside and the appellant shall continue to perform duty in the office of the Agency Surgeon till further orders of competent authority in accordance with law."

3. That whereas the fact is that the impugned Notification was issued on 09.10.2015.
4. That now the correction is required in the last Para-6 of the said judgment the date may be corrected as 09.10.2015 instead of

07.01.2014.

- 5. That the mentioned error in the judgment is clerical one and can be rectified at any stage by the Hon'ble Tribunal.

It is therefore humbly prayed that on acceptance of this application, the last Para-6 of the judgment dated 25.07.2017 out of Service Appeal No.61/2016 may kindly be rectified.



**Applicant/
Appellant**

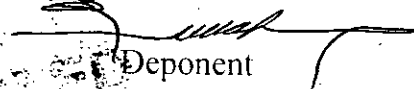
Through

Khaled Rahman,
Advocate, Peshawar.

Dated: 02/10/2017

Affidavit

I, Muhammadullah, Head Clerk/Assistant, Office of Agency Surgeon, Mohmand Agency at Ghallani, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

ATTESTED



2-10-2017

Mahammadullah

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 61/2016

Date of Institution ... 18.01.2016

Date of Decision ... 25.07.2017



Muhammadullah, Office Assistant/Head Clerk,
O/o the Agency Surgeon, Mohmand Agency at Ghallani.

... (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat,
Warsak Road Peshawar and 3 others.

... (Respondents)

MR. KHALED RAHMAN,
Advocate

For appellant.

MR. USMAN GHANI
District Attorney

For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

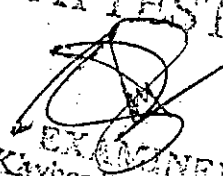
MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER. - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the present appeal has been filed against the impugned order dated 09.10.2015 issued by respondent no.4 whereby appellant was unlawfully relieved from the post of Office Assistant/Head Clerk against which he preferred departmental appeal to respondent no.3 but the same was not disposed of within the statutory period.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

3. The learned counsel for the appellant argued that vide order dated 07.01.2014 he was transferred from DHS FATA to Agency Surgeon Mohmand Agency. He was deputed to work as Head Clerk. Respondent no.4 relieved the appellant him with directions to report to DHS FATA vide order dated 09.09.2015. It is clarified that he was not competent to issue this order. Being a BPS.16 official DHS, FATA was the competent authority to issue posting/transfer order. The above order was withdrawn by the respondent no.3 on 10.09.2015. On 09.10.2015 respondent no.4 again relieved the appellant. In order to ascertain the factual position respondent no.4 ordered an enquiry into the matter and the enquiry officer submitted report in favour of the appellant. It may not be out of place to mention here that on account of irregularities an enquiry is being conducted against Ex-Agency Surgeon, Mohmand Agency Dr. Daud Khan by the NAB.

4. On the other hand District Attorney argued that the appellant was relieved from his duty by respondent no.4 in accordance with invogue rules. When confronted on the point to highlight relevant rules under which the respondent no.4 was competent to relieve the appellant, he was unable to give a plausible explanation. He also stated that the appellant posted on detailment basis but no such thing was mentioned in the transfer order dated 07.01.2014. He was unable to substantiate his argument with record available on file.

CONCLUSION.

5. Having gone through the record it transpired, that competent authority for posting/transfer of appellant was DHS FATA and initial transfer order dated 07.01.2014 was also issued by him. As such order dated 09.09.2015 issued by respondent no.4 was illegal, void ab-initio and without lawful authority. It was also against the established norms of office decorum/discipline and tantamount to mis-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

use of official position/authority which falls in the ambit of misconduct. It is quite strange that respondent no.3 showed complacency and did not initiate disciplinary action against respondent no.4. Prima-facie either it was collusion between them or respondent no.4 was more powerful than the prevalent law/rules. Provisions contained in posting/transfer regarding tenure were also violated in this case.

6. In view of the afore-going, the present appeal is accepted and impugned order dated 07.01.2014 is set aside and the appellant shall continue to perform duty in the office of Agency Surgeon till further orders of competent authority in accordance with law. Parties are however, left to bear their own costs. File be consigned to the record room.

Ed Ahmad Hassan,
Member

Ed M. Haraid Mughal,
Member

Certified to be true copy

Stamp: **Service Tribunal, Peshawar**

Date of Presentation of Application 25-7-17

Number of Words 1200

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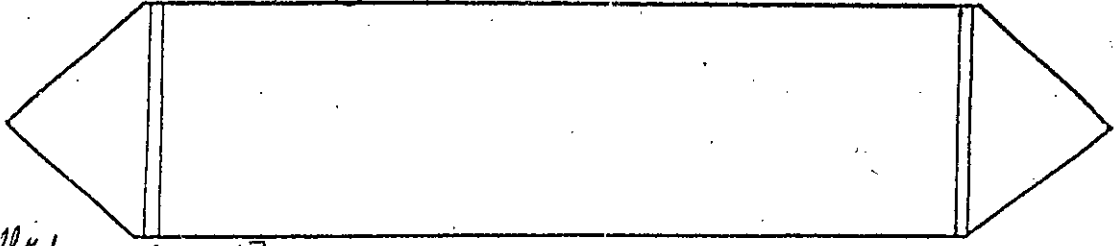
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Name of Copyist [Signature]

Date of Completion of Copy 03-8-17

Date of Delivery of Copy 03-8-17

بعدالت دبر حضور محو اسرہ میں شہرہ پوسل لکھتے۔



2017ء منجانب ایڈووکیٹ

محمد اللہ بنام ٹورنٹ

اہل سنہ 61/2016

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لئے صاحب مدعا کیلئے صاحب مدعا کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب مدعا کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 02 ماہ اکتوبر 2017

العبد گواہ العبد

کے لئے منظور ہے۔
Alested
Accepted

بمقام