

Order

27.11.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents and present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in connected service appeal No. 221/2016 titled "Yousaf Hayat-vs-The Secretary Health Department Khyber Pakhtunkhwa, Peshawar and four others" Parties are left to bear their own cost. File be consigned to the record room.

Announced:

27.11.2018



(Ahmad Hassan)

Member

Camp Court D.I.Khan



(Muhammad Amin Khan Kundi)

Member

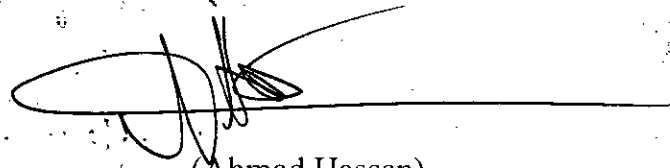
Order

27.11.2018 Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost.

File be consigned to the record room.

Announced:  
27.11.2018



(Ahmad Hassan)  
Member  
Camp Court D.I.Khan

(Muhammad Amin Khan Kundi)  
Member

6/11

20.06.2018

Neither the appellant nor his counsel present.  
Mr.Sadaqat Ullah Deputy Secretary alongwith Mr. Usman  
Ghani, learned District Attorney for the respondents present.  
Adjourned. To come up for arguments on 27.08.2018 before  
the D.B. at camp court D.I.Khan.

  
Member

  
Chairman  
Camp Court, D.I.Khan

27-08-2018

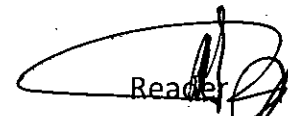
Appellant in person present. M. Jamshed, CCT,  
on behalf of respondents present.

Tour 13 hereby cancelled, therefore, the case  
is adjourned for the same on 12-09-2018 at  
camp court D.I.Khan.

  
Reader

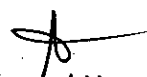
12.09.2018


12<sup>th</sup> September has been declared as public holiday  
on account of 1<sup>st</sup> Muharram therefore, the case is adjourned  
for the same on 26.11.2018 before D.B at Camp Court  
D.I.Khan.

  
Reader  
Camp Court D.I.Khan

26.11.2018


Appellant in person present. Mr. Usman Ghani, District  
Attorney for the respondents present. Appellant requested for  
adjournment on the ground that his counsel is not available  
today. Adjourned. To come up for arguments on tomorrow i.e  
27.11.2018 before D.B at Camp Court D.I.Khan.


  
(Ahmad Hassan)  
Member  
Camp Court D.I.Khan

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

21.02.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Samiullah, Junior Clerk for the respondents also present. During the course of arguments it was observed that the appellant was appointed as Ward Attendant (BPS-1) on contract basis vide order dated 25.10.2008. Learned counsel for the appellant was confronted on the point to provide any proof regarding subsequent regularization of services of the appellant. However, he was unable to produce any proof. Prima-facie it appears to be an appointment on contract basis and as such the appellant is not a civil servant and cannot invoke the jurisdiction of this Tribunal. Learned counsel for the appellant sought adjournment. Request accepted. Adjourned. The appeal is fixed for arguments on the point of maintainability on 23.04.2018 before D.B at Camp Court D.I.Khan.

  
(Ahmad Hassan)  
Member  
Camp Court D.I.Khan

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

25.05.2018

Due to retirement of the worthy Chairman, the Tribunal is non-functional. To come up for the same on 20.06.2018. Notices be issued to the parties accordingly.

  
Member

Service Appeal No. 225/2016

26.12.2017

Bench is incomplete. To come up for arguments on 28.12.2017.



(Muhammad Hamid Mughal)  
Member  
Camp Court D.I.Khan

28.12.2017

Counsel for the appellant Malik Muhammad Faisal, Advocate present and submitted fresh Wakalatnama. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Jamshed, Chief Clinical Technician for the respondents present. Newly engaged learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 23.01.2018 before D.B at Camp Court D.I.Khan.



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



(Muhammad Hamid Mughal)  
Member  
Camp Court D.I.Khan

23.01.2018

Appellant in person and Mr. Farhaj Sikandar, Deputy District Attorney alongwith Mr. Samiullah, Junior Clerk for respondents. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 20.02.2018 before D.B at camp court D.I.Khan.




(AHMAD HASSAN)  
Member



(M.AMIN KHAN KUND)  
Member  
Camp Court D.I.Khan


26.07.2017

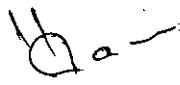
Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned counsel for the appellant submitted rejoinder and copy also handed over to learned District Attorney for arguments. To come up for arguments on 24.10.2017 before D.B at Camp Court D.I.Khan.

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

24.10.2017


Counsel for the appellant and Mr. Farkhaj Sikandar, District Attorney present. Representative of the respondents are not present. Respondents no. 3 and 5 be summoned in person on the next date of hearing failing which their salaries will be attached. To come up for arguments on 27.11.2017 before D.B at camp Court D.I.Khan.


  
Member  
(Executive)

  
Member  
(Judicial)  
Camp Court D.I.Khan

27.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Jamshid, Chief Clinical Technologist for the respondents also present. Due to general strike of the Bar learned counsel for the appellant is not in attendance today. Adjourned. To come up for arguments on 26.12.2017 before D.B at Camp Court D.I.Khan.

  
(Gul Zeb Khan)  
Member

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

226/2016


27.09.2016

Appellant in person, M/S Abdul Manan, Stenographer and Tufail Khattak, SO alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Written reply by respondents not submitted and requested for further time to submit written reply. Request accepted. To come up for written reply/comments on 24.01.2017 before S.B at Camp Court D.I.Khan.

  
Member  
Camp Court D.I.Khan

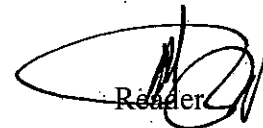
25.01.2017

Appellant in person and Mr. Saleem, Junior Clerk alongwith Mr. Farhaj Sikandar, Government Pleader for official respondents present. Written reply by respondents submitted and copies delivered to all concerned. To come up for rejoinder and arguments on 28.03.2017 before D.B at Camp Court D.I.Khan.

  
ASHFAQUE TAJ  
MEMBER  
Camp Court D.I.Khan

28.03.2017

Since tour is hereby cancelled, therefore, the case is adjourned for the same on 26.07.2017.

  
Reader

21.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 12.1.2013 services of appellant were terminated where-against he preferred departmental appeal followed by service appeal which was decided by this Tribunal vide judgment/order dated 16.10.2015 giving directions therein for deciding the departmental appeal within two months where-after the same was decided on 18.1.2016 maintaining the original order and hence the instant service appeal on 16.2.2016.

That the directions issued by the Tribunal in its judgment were not followed and the impugned termination order is against facts and law.

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 9.5.2016 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

09.05.2016

Agent of counsel for the appellant and Mr. Abdul Manan, Steno alongwith Asstt. AG for the respondents present. Requested for adjournment. The appeal pertains to territorial limits of D.I.Khan Division as such assigned to S.B for written reply/comments on 25.07.2016 at camp court, D.I.Khan.

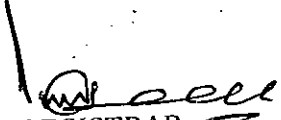

  
Chairman



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 225/2016

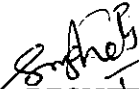
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.03.2016	<p>The appeal of Mr. Muhammad Bilal resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>21-3-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Bilal Ex-Ward Attendant MMT Hospital D.I.Khan received to-day i.e. on 16.02.2016 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Copy of judgment of this Tribunal mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures C, D, E, H, I, M and N of the appeal are illegible which may be replaced by legible/better one.
- 3- Many documents attached with the appeal are torn.

No. 255 /S.T,

Dt. 17/2 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

*Respected*

*1- Removed*

*2- Removed*

*3- Removed*



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 225 /2016

Muhammad Bilal

V/S

Health Deptt:

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S.NO.	Documents	Annexure	Page No.
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2.	Copy of appointment	A	7
3.	Copy of medical fitness	B	8
4.	Copy of charge report	C	9
5.	Copy of stoppage of salary	D	10-11
6.	Copy of order of High Court	E	12-15
7.	Copy of termination order(8.6.2009)	F	16-18
8.	Copy of judgment of service Tribunal	G	19-26
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APPELLANT

THROUGH:

  
(M. ASIF YOUSAFZAI)

&

  
(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 225/2016

Muhammad Balil, Ex- Ward Attendant,

MMT Hospital D.I.Khan

(Appellant)

K.P. Province  
Service Tribunal

Diary No. 107

16-2-2016

Versus

- 1: The Secretary Health Deptt: KPK, Peshawar.
- 2: The Director General Health Services KPK, Peshawar
- 3: The Medical Superintendent MMT Hospital, D.I Khan
- 4: The Distt: Accounts Officer D.I Khan.
- 5: The Chief Executive M.M.T Hospital D.I Khan.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 18.01.2016, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 12.01.2013 HAS BEEN REJECTED FOR NO GOOD GROUNDS AND IN VIOLATION OF SERVICE TRIBUNAL'S JUDGMENT.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 18.01.2016 MAY BE SET ASIDE BEING PASSED ARBITRARILY, ILLEGALLY, WITHOUT OBSERVING PROCEDURE AS DIRECTED BY THE AUGUST SERVICE TRIBUNAL VIDE JUDGMENT DATED. 16.10.2015. THE RESPONDENT MAY FURTHER PLEASE BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS AND ALSO

Filed to  
Subj  
16.2.16  
Registrar

re-submitted to-427  
and filed.

Registrar  
11/3/16

GRANT THE SALARIES OF THE APPELLANT W.E.FROM MARCH 2009 TILL THE REJECTION ORDER DATED 18.01.2016. AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH.

**FACTS:**

1. That the appellant was appointed as ward attendant in the MMT Hospital D.I by the competent authority vide order dated 25.10.2008 ,the appellant got medical fitness and took over the charge of the post on 1.11.2008 .(copies of the order medical fitness and charge reporter attached as Annexure -A,B&C)
- 2 -The appellant was performing duties up to the entire satisfaction of the superior, but all of sudden on coming new M.S, the pay of the appellant was stopped vide order dated 11.03.2009 without any notice or chance of defense. (Copy of the order is attached as Annexure-D)
- 3 - That the appellant against stoppage of the salaries filed a Writ Petition bearing No.207/09 in the august High Court. The Hon'able High Court in its decision held that since the petitioner is a civil servant, therefore he should approach to Service Tribunal ad the mean while his Writ Petition was treated as departmental appeal which was sent to the departmental authority for decision up to 30/06/2009 positively. (Copy of High Court decision is attached as Annexure-E)
- 4 - That as the departmental authority was failed to give decision on the appeal of the appellant up to 30/6/2009, as directed by the Hon'able High

Court, therefore the appellant filed service appeal in this Tribunal but as the respondent No.3 had passed termination order on 08/06/2009. Therefore appeal for the payment of service of the appellant was become in fructuous, however the august Tribunal was pleased to direct the respondent NO.2 on 31.12.2009 for deciding the pending departmental appeal of the against the termination order within one month. (Copies of termination order and the tribunal decision are attached as Annexure-F&G)

- 5- That after obtaining the rejection order, the appellant filed service appeal 876/ 2010 which was decided on 5.4.2012. The august Tribunal was kind enough to reinstate the appellant for proper departmental proceeding with full chance of defence. (Copy of judgment is attached as Annexure-H)
- 6- That then the respondent Deptt reinstated the appellant on 29.11.2012 and then without following proper procedure and directions of the august tribunal again terminated the appellant on the basis of so called publication vide order dated. 12.1.2013. (copy of the order dated 12.1.2013 is attached as annexure-I)
- 7- That the appellant again filed departmental appeal on 20.2.2013 and waited for statutory period but no reply received by the appellant, therefore the appellant filed service appeal 992/2013 against the order dated 12.1.2013 in this august Tribunal which was decided 16.10.2015 in which the august Tribunal remit the case to the appellate authority with the direction to examine it and decide departmental appeal of the appellant as soon as possible but not later than 2 months after receipt of

the judgment, however the appellate authority again reject the case vide order dated 18.01.2016. (Copies of the of the departmental appeal, Service Tribunal judgment and rejection order are attached as Annexure-J,K&L)

- 8- That now the appellant is constrained to file the present appeal on the following ground amongst others.

**GROUNDS:**

- A- That the impugned orders dated 18.1.2016, 12.1.2013 and non-payment of salaries are illegal against the law, rules, norms of justice and passed without observing the proper procedure and principles of justice.
- B- That the impugned order passed by the respondent Deptt is in utter violation of the principles of "Audi Altrem Partem" and judgments of the Supreme Court of Pakistan has held that this principles is to be read in every statute even not specifically, provided
- C- That the appellant has been condemned unheard and no chance of personal hearing was provided to the appellant while passing the impugned order.
- D- That in case of termination, charge sheet and statement of allegation are must and mandatory as per provision of law but in the instant case no such provisions of law has been followed. Thus termination order is totally illegal viod ab-initio.

E- That the appellant appointment order was remained in field for considerable long time and under the principles of "locus poenitentiae" the appellant's valuable rights created in pursuant to appointment order cannot be infringed.

F- That the impugned orders are arbitrary which is against the all norms and canons of justice.

G- That Service Tribunal ordered to inquire in the matter in a proper way by giving full chance of defense to the appellant but the Deptt neither follow the directions nor conduct regular inquiry and terminated the appellant on the basis of publication of show cause notice in a slipshod manner.

H- That the final rejection order is against the ruling of the Supreme Court of Pakistan in which it has been held that every order of the departmental authority must be speaking one and be based on well founded reasons, while in the present case no reasons given by Deptt: and even not responded the departmental appeal of the appellant, which is an arbitrary act on the part of the respondents.

I- That in the instant matter, two earlier inquires have been conducted and in both the inquires the re-instatement of the appellant has been recommended. (Copies of the inquiries are attached as Annexure-M&N)



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

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

APPELLANT *M. Bilal*  
MUHAMMAD BILAL

THROUGH: *Amir Jai*  
(M.ASIF YOUSAFZAI)  
& *Taimur Ali Khan*  
TAIMUR ALI KHAN  
(ADVOCATES PESHAWAR)

OFFICE OF THE MEDICAL SUPERINTENDENT  
MMM TEACHING HOSPITAL DERA ISMAIL KHAN

OFFICE ORDER:

Mr. Mohammad Bilal S/O Rabnawaz R/O Moh: Bamoshahwali Dera City DIKhan is hereby appointed as Ward Attendant BPS-1 @Rs.2970/- plus allowances admissible under the Rules subjected to revision from time to time against the existing vacancy at Mufti Mehmood Memorial Teaching Hospital Dera Ismail Khan on the following terms and conditions according to the Government Policy:

- 1--His appointment in the Health Department is purely on contract basis and his services are liable to termination at any time without giving any notice or assigning any reason.
- 2--He will be governed by such rules made and instructions issued relating to traveling allowance, general provident fund, pension, leave, medical charges and conduct and discipline by the Government from time to time for the category of civil servant to which he belongs.
- 3--No TA/DA is allowed to him for joining duty.
- 4--In respect of other matters not specified in this appointment, the Rules/Regulations as applicable to Provincial Civil Servants shall apply.
- 5--The appointment is liable to terminations on 30 days notice on either side or payment of one basic pay in lieu thereof without assigning any reason.
- 6--If the above terms and conditions of appointment are acceptable to him; he should send his written confirmation by registered post or personally so as to reach the undersigned with-in one month of the receipt of this letter.
- 7--This offer of appointment will be treated as cancelled if he does not convey acceptance thereof or resumed duty within the specified time.
- 8--He will produce medical fitness certificate before resuming duty.

Medical Superintendent.  
MMM Teaching Hospital DIKhan

No. 169-172 Dated the DIKhan 25/10/2008.  
Copy is forwarded to:

- 1--District Accounts Officer DIKhan
- 2--Head clerk MMMTH DIKhan
- 3--Accounts clerk MMMTH DIKhan
- 4--Mr. Mohammad Bilal S/O Rabnawaz R/O Dera City DIKhan

Medical Superintendent  
MMM Teaching Hospital DIKhan

51/10/08

ATTACHED



A-C-111

F.P. Med No

MEDICAL CERTIFICATE

BC8

Name of Official Muhammad Bilal  
 Caste or Race Ayazim  
 Father's Name Rab Nawaz  
 Residence Mohallah Bannu, State - Teh. & - Distt. D.I. Khan  
 Date of Birth 02-03-1979 (12-12-1973 521-3)  
 Exact height by measurement 5-8  
 Personal marks of identification A Scar on Rt. Leg  
 Signature of the Official M. Bilal  
 Signature of .....  
 Head of office .....

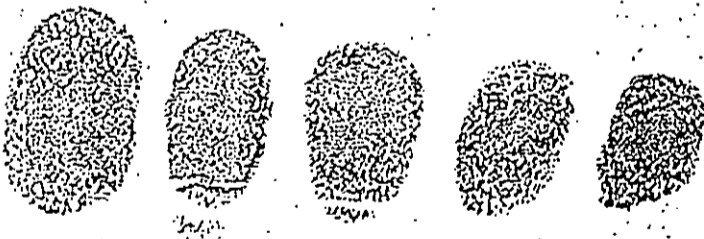
Report on dict 31/10/08

Medical Superintendent  
 Seal of Office Muhammad Memorial  
Teaching Hospital D.I. Khan

31/10/08

I do hereby certify that I have examined Mr. Muhammad Bilal  
 a candidate for employment in the Office of the M.M.M. Teaching Hospital D.I. Khan  
 and can not discover that he had any disease communicable or other constitutional  
 affliction or bodily infirmity except .....

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



LEFT HAND THUMB AND FINGER  
 IMPRESSIONS D.I. Khan .....

Medical Superintendent  
 Muhammad Memorial  
 Teaching Hospital D.I. Khan

31/10/08

**ATTESTED**



RECEIVED

Handwritten notes in Urdu script, including the word "میں" (me) and "کے" (of).

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A-2 # R XII

OFFICE OF THE MEDICAL SUPERINTENDENT, JAMIA TEACHING HOSPITAL, DIKHAN.

No. 3/6 18/1 Dated

Dikhani the

11/11/2009

The District Accounts Officer,  
Dera Ismail Khan

Subject: STOPPAGE OF PAY.

Memor: Please reference to subject. It is submitted that:-

The following staff whose names are enlisted in the pay roll of February 2009 are recruited violating the rules and regulation of recruitment.

The staff is physically not present on duty. No any NOC is obtained from District Government. Moreover their service record including Service Books, appointment orders, Medical Fitness etc are not available in this office.

No.	Name	Designation	BPS	Personnel No.	Account No.	Bank Branch	Pay
1	M. Muhammad Kamran	MEGR	09	00429261	PLS-1006916-2	UBL Circular Road DIK	4840/-
2	M. Muhammad Melran	MEGR	09	00429266	PLS-8931-9	Khyber Bank DIKhan	4840/-
3	N. seb Ullah	Junior Clerk	07	00429251	PLS-4006-6	NBP Circular Road DIKhan	4522/-
4	Muhammad Anwar Khan	Telephone Operator	05	00433203	PLS-8973-4	Khyber Bank DIK	4481/-
5	Sajid Khan	Generator Operator	05	00433201	PLS-	HBL Bakery Bazar DIK	4035/-
6	Muhammad Shafiq	Fireman	01	00429257	PLS-	HBL Bakery Bazar DIK	3966/-
7	Farida	DAI	02	00433202	PLS-	HBL Bakery Bazar DIK	4085/-
8	Sa. Isha Bibi	DAI	02	00429253	PLS-4630-3	ADB Fingerprint Gate DIK	4030/-
9	T. Iqbal Bibi	DAI	02	00429254	PLS-	HBL Circular Road DIK	4030/-
10	H. Ahsana Begum	DAI	02	00429256	PLS-	HBL Bakery Bazar DIK	4030/-
11	H. Ahsana Bibi	DAI	02	00429258	PLS-4319-3	NJP Circular Road DIK	4030/-
12	Z. Iqbal Rashid	DAI	01	00433369	PLS-	HBL Circular Road DIK	4021/-
13	Y. Iqbal Fayal	Ward Attendant	01	00429265	PLS-1021936	UBL Bakery Bazar DIK	3966/-
14	Muhammad Imran	Ward Attendant	01	00429266	PLS-4319-3	ABL DIKhan	3966/-
15	Muhammad Anwar	Ward Attendant	01	00429263	PLS-4330-4	ABL DIKhan	3966/-

**ADMITTED**

**10**

11

16	Muhammad Bilal	Ward	01	00429258	PLS-6378-8	ABL Circular Road DIK	3966/-
17	Muhammad Faheem	Attendant	01	00429252	PLS-4628-9	ABL Faqimi Gate DIKhan	3966/-
18	Muhammad Ali	Ward	01	00431092	PLS-1357900232903	HBL Circular Road DIK	3966/-
19	Muhammad Irfan	Attendant	01	00429253	PLS-135790010104401	HBL Circular Road DIK	3966/-
20	Muhammad Sajid	Cleaner	01	00431094	PLS-4627-3	ABL Faqimi Gate DIK	8327/-
21	Shah Nawaz	Cleaner	01	00431093	PLS-1357900237401	HBL Circular Road DIK	8327/-
22	Bashir	Ward	01	00429259	PLS-1357900225001	HBL Circular Road DIK	3966/-
23	Muhammad Ahmed	Attendant	01	00429266	PLS-8926-0	Khyber Bank DIKhan	3966/-

It is requested that to stop the pay of above mentioned staff immediately to proceed further in the matter.

*[Signature]*  
 Medical Superintendent  
 MMM Teaching Hospital  
 Dera Ismail Khan

No.

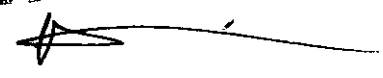
Copy is forwarded to:-

1. The Director General Health Services NWFP Peshawar for information please.
2. The District Coordination Officer DIKhan for information.  
Dr. Muhammad Arif Ullah Khan DMS (Admin) MMM Teaching Hospital DIKhan for detail enquiry and report within 15 days.
3. Account Clerk MMM Teaching Hospital DIKhan for information and necessary action.

*[Handwritten signature]*  
 Attested

Medical Superintendent  
 MMM Teaching Hospital  
 Dera Ismail Khan

**ATTESTED**





Better Copy      Annexure-D

OFFICE OF THE MEDICAL SUPERINTENDENT MMM TEACHING HOSPITAL DI KHAN

No. 3/6      dated DIKhan      the  
To

1/3/2009

The District Accounts Officer  
Dera Ismail Khan

Subject:    STOPPAGE OF PAY

Memo:      please reference to subject, It is submitted that:

The following staff, whose names are enlisted, in the pay role of February 2009 are recruited violating the rules and regulations of recruitment.

The staff physically not present on duty No any NOC is obtained from district Government. Moreover their service record including service books appointment orders, medical fitness etc are not available in this office.

S NO	name	Designation	BP S	Personal No.	Account No.	Bank Branch	Pay
1	Muhammad kamran	M&R Technician	09	00429261	PLS1006916-2	UBL Circular Road DIK	4840/.
2	Muhammad Mehran	M&R Technician	09	00429264	PLS-8931-9	Khyber Bank DIK	4840/.
3	Najeeb ullah	Junior Clerk 07	07	00429251	PLS4006-6	NBP Circular Road DIK	4522/.
4	Muhammad Anwar khan	Telephone operator	06	00433203	PLS8973-4	Khyber bank DIK	4481/.
5	Sajid Khan	Generator Operator	05	0500433201	PLS-15407900072701	HBL Bakhry bazaar DIK	4085/.
6	Muhammad Shafiq	Fireman	01	00429257	PLS-15407900066101	HBL Bakhry bazaar DIKhan	3966/.
7	Farida	Dai	02	00433202	PLS-15407900069301	HBL bakhry Bazar DIKhan	4085/.
8	Saida Bibi	Dai	02	00429253	PLS-4630-3	ABL Fqrini Gate DIKhan	4030/.
9	Tasleem Bibi	Dai	02	0042954	PLS-15407900232101	HBL Circular Road DIK	4030/.
10	Rukhsana Begum	Dai	02	00429256	PLS-1357900066701	HBL Bakhry bazar DIK	4030/.
11	Rukhsana Bibi	Dai	02	00429255	PLS-4249-3	NBP Circular Road DIK	4021/.
12	Abdur Rashid	Chowkidar	01	00433369	PLS-1357900258701	HBL Circular Road DIK	4021/.
13	Yousaf Hayat	Ward Attendant	01	00425265	PLS-01021936	UBL Bakhry Bazar DIK	3966/.
14	Muhammad Imran	Ward Attendant	01	00429260	PLS-4349-3	ABL DIK	3966/.
15	Muhammad Anwar	Ward Attendant	01	00429262	PLS-4350-4	ABL DIK	3966/.
16	Muhammad	Ward	01	00429258	PLS-6878-8	ABL circular	3966/.

	Bilal	Attendant				Road DIK	
17	Muhammad faheem	Ward Attendant	01	00429252	PLS-4628-9	ABL Faqirni Gate DIK	3966/.
18	Muhammad ali	Ward Attendant	01	00431092	PLS-1357900232903	HBL Cirular Road DIK	3966/.
19	Muhammad Irfan	Ward Attendant	01	00429293	PLS-135970010104401	HBL Circular Road DIK	3966/.
20	Muhammad Sajid	cleaner	01	00431093	PLS-4627-8	ABL Faqirni Gate DIK	8327/.
21	Shah Nawaz	Cleaner	01	00431093	PLS-13697900237401	HBL Circular Road DIK	8327/.
22	Bashir	Ward Attendant	01	00429259	PLS-1359700225001	HBL Circular Road DIK	3966/.
23	Ikhlaq Ahmad	Ward Attendant	01	0049266	PLS-8926-0	Khyber Bank DIK	3966/.

It is requested that to stop the pay of above mentioned staff immediately to proceed further in the matter.

Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan.

No.

Copy is forwarded to:-

1. The Director General Health services NWFP Peshawar for information please.
2. The district Coordination officer DIKhan for information.  
Dr. muhammad Arif Ullah Khan DMS (Admin) MMM Teaching Hospital DIKhan for detail enquiry and repost within 15 days.
3. Account Clerk MMM teaching Hospital DIKhan for information and necessary

Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan.



ATTACHED

2/3

RESPONDENTS

*Finance Department*

THE CHIEF THROUGH ACCOUNTS GENERAL, MISS, PESHAWAR.

DISTRICT ACCOUNTS OFFICER, DEPT. ISMAIL KHAN.

DEPT. DEPT. BUDGET, SENIOR MEDICAL OFFICER, MURRAY KOTLE KENWOOD CIVIL HOSPITAL, D.I. KHAN.

DIRECTOR GENERAL (HOSPITAL SERVICES), N.W.F.P., PESHAWAR.

CHIEF OF N.W.F.P. THROUGH SECRETARY HEALTH DEPARTMENT, CIVIL SERVICES, PESHAWAR.

A B C D E

PETITIONERS

M/O KHANSAH SHEIKH, D.I. KHAN.

SON OF KHANSAH SHEIKH, D.I. KHAN.

M/O KHANSAH SHEIKH, D.I. KHAN.

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M/O KHANSAH SHEIKH, D.I. KHAN.

SON OF KHANSAH SHEIKH, D.I. KHAN.

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06 MAY 2009  
Deputy Registrar

FILED TODAY

12/9/05

EXAMINER

ATTACHED

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A-B-2

BEFORE THE HONOURABLE PESHAWAR HIGH PESHAWAR. Better Copy Annexure-E

Writ Petition. No. 207 of 2009

1. MUHAMMAD KAMRAN SALEEM M&R TECHNICIAN  
S/O HAJI ALLAH NAWAZ SALEEM,  
R/O STREET ASLAM FAQIR D.D.KHAN
2. MUHAMMAD MEHRAN M&R Technician,  
SON OF MUHAMMAD YOUNAS  
R/O QUARTER NO.3 ZANANA HOSPITAL, ASLAM FAQIR, DI KHAN.
3. NAJIB ULLAH JUNIOR CLERK,  
SON OF HAMEED ULLAH,  
R/O DERA CITY D.I.KHAN
4. MUHAMMAD ANWAR KHAN, TELEPHONE OPEARTOR,  
SON OF RAB NAWAZ  
R/O VILL: LONY, TEHSIL KULACHI, D.I KHAN.
5. SAJID KHAN GENERATOR OPERATOR,  
SON OF FARID KHAN  
R/O MOHALLAH SHUKHI, KULCHI, D.I KHAN.
6. MUHAMMAD SHAFIQ , FIREMAN,  
SON OF QAZI MUHAMMAD ISHAQUE  
R/O DERA CITY D.I.KHAN.
7. MRS. FARIDA, DAI  
D/O DILAWAR KHAN  
R/O MOHALLAH JUGIAN WALA, DERA CITY, DI KHAN.
8. MST. SAJIDA BIBI, DAI  
D/O FAIZULLAH  
R/O D.I.KHAN CITY
9. MST. TASLEEM BIB, DAI  
WIFE OF MUHAMMAD SALEEM,  
R/O RATA, KULACHI, DI KHAN
10. MST. RUKHSANA BEGUM,DAI,  
W/O MAQSOOD ANWAR,  
R/O NAJAF ROAD KACHI PIND KHAN, D.I KHAN.
11. MST. RUKHSANA BIBI, DAI,  
W/O MUHAMMAD SHAKIR,  
R/ODI KHAN CITY, D.I KHAN.
12. ABDUL-UR-RASHID, CHOWKIDAR,  
SON OF AMIN MUHAMMAD,  
R/O GHARAR GUL KULACHI, D.I KHAN.
13. YOUSAF HAYAT, WARD ATTENDANT,  
SON OF AZIZ KHAN,  
DEFENCE COLONY D.I KHAN.
14. MUHAMMAD IMRA, WARD ATTENDANT,  
SON OF MALIK SIRAJUDDIN,  
R/O VILLAGE DI KHAN, NEW DERA DI KHAN.
15. MUHAMMAD ANWAR, WARD ATTENDANT,  
SON OF MUHAMMAD RAMZAN,  
R/O DEFENCE COLONY D.I KHAN.
16. MUHAMMAD BILAL, WARD ATTENDANT,  
SON OF RAB NAWAZ,  
R/O MOHALLAH KIRI ADIZAI, D.I KHAN CITY, D.I KHAN.
17. MUHAMMAD FAHIM, WARD ATTENDANT  
SON OF GHULAM YASIN  
R/O MOHALLAH KIRI ADIZAI, D.I KHAN CITY D.I KHAN.
18. MUHAMMAD ALI, WARD ATTENDANT,  
SON OF RASHID AHMID  
R/O SHAH ALAM ABAD, D.I KHAN.
19. MUHAMMAD IRFAN, WARD ATTENDANT,  
SON OF MUHAMMAD NAWAZ  
R/O QAISER ABDA COLONY, D.I KHAN.
20. MUHAMMAD SAJID, CLEANER,

- SON OF MUHAMMAD SADIQ  
R/O D.I KHAN CITY, D.I KHAN.
21. SHAH NAWAZ, CLEANER,  
SON OF HAQ NAWAZ,  
R/O D.I KHAN CITY, D.I KHAN.
  22. BASHIR, WARD ATTENDANT,  
SON OF MUHAMMAD NAWAZ,  
R/O D.I KHAN CITY, D.I KHAN.
  23. IKHLAQ AHMAD, WARD ATTENDANT,  
SON OF MUSHTAQ AHMAD,  
R/O MOHALLAH, SHIP SHAH, D.I KHAN.

..... PETITIONERS

VERSUS

1. GOVT: OF NWFP, THROUGH SECRETARY HEALTH DEPARTMENT,  
CIVIL SECRETARIAT, PESHAWAR.
2. DIRECTOR GENERAL, (HEALTH SERVICE), N.W.F.P, PESHAWAR.
3. DR. SHAH JEHAN BALOCH, SENIOR MEDICAL OFFICER,  
MAULANA MUFTI MAHMOOD CIVIL HOSPITAL, D.I. KHAN.
4. DISTRICT ACCOUNTS OFFICER, DERA ISMAIL KHAN.
5. THE STATE THROUGH ADVOCATE GENERAL, NWFP, PESHAWAR.
6. FINANCE DEPARTMENT

..... RESPONDENTS

JUDGMENT

74

Date of hearing 9.6.2009

Appellant: Muhammad Kamran Saleem & others by Mr. Khant Khan  
respondent: Govt of NWFP & others by Muhammad Khatun  
D.A. Mr. Rustom Khan Kundi Advocate

MUHAMMAD ALAM KHAN I- Muhammad

Kamran Saleem and 22 others have through this writ petition challenged the order dated 11/3/2009 whereby their salaries have been stopped.

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2. The grievances of the petitioners are that they have actually performed duties in accordance with law and the attendance register available on record duly signed by the then Medical Superintendent Doctor Shah Jehan supports their claim, that no NOC has been obtained from the DCO, that Mufti Mehmood Teaching Hospital is under the direct control of Provincial Government and not under the District Government.

13/6/09

ATTESTED  
13/6/09

ATTESTED D.I. Khan and thus, there was no need for issuance of NOC, their appointment orders are intact, medical fitness, arrival reports and service books are available and annexed with the petition.

3. Mr. Rustom Khan Kundi advocate for respondent No. 4 argued that the petitioners are civil

ATTESTED  
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JUDGMENT

14

Date of hearing 9.6.2009

Appellant: Muhammad Kamran Saloom - (Ch) by Mr. Khattak  
respondent: Govt of NWFP & others by Mr. Qasim Khan  
D.A. by Mr. Raza Khan Advocate

MUHAMMAD ALAM KHAN I. - Muhammad

Kamran Saloom and 22 others have through this writ petition challenged the order dated 11/3/2009 whereby their salaries have been stopped.

14

2. The grievances of the petitioners are that they have actually performed duties in accordance with law and the attendance register available on record duly signed by the then Medical Superintendent Doctor Shah Jehan supports their claim, that no NOC has been obtained from the DCO, that Mufi Mehmood Teaching Hospital is under the direct control of Provincial Government and not under the District Government.

F. 13/6/09

ATTESTED  
13/6/09

D.I. Khan and thus, there was no need for issuance of NOC, their appointment orders are intact, medical fitness, arrival reports and service books are available and annexed with the petition.

3. Mr. Rustam Khan Kundi advocate for respondent No. 4 argued that the petitioners are civil

ATTESTED  
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servants and in view of the bar contained under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, their case exclusively falls within the domain of NWFP Service Tribunal and thus the instant writ petition is not maintainable.

3. We have scanned the record and find that since the petitioners are civil servants, in view of the bar contained under Article 212 of the Constitution and the dicta handed down in the case of Muhammad Anees and others...Vs...Afzal Sher and others (PLD 1994 SC 539), the writ petition is not maintainable. However, instead of dismissing the same, in view of the dicta handed down in the case of Muhammad Ilyas Patwari...Vs...District Officer Revenue Peshawar etc (PLJ 2008 Peshawar 75), we treat it as representation on behalf of the petitioners and remit the same to Director General Health NWFP Peshawar/respondent No.2 with direction to decide the same positively by 30<sup>th</sup> June 2009 after hearing the petitioners or their learned counsel Khan Askar Afridi Advocate. In case their grievances are not redressed, they will be at liberty to move afresh the appropriate Services Tribunal in the matter.

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13/6/09

ANNOUNCED  
9/6/2009.

M. Ali  
JUDGE  
JUDGE

ATTACHED

Office of the Medical Superintendent MMM Teaching Hospital  
Dera Ismail Khan

F (16)

Office Order:-

Reference Director General Health Services NWFP Peshawar office letter No. 3786/Personal dated 15-05-2009.

The following employees of this Hospital recruited on 25-10-2008, without observing codal/legal formalities before making appointments, are hereby terminated w.e.f. the date of posting on 25-10-2008.

S.N o	Name	B PS	Designation	Personal No	Reason for Termination	Specific Deficiency
1.	Muhammad Kamran	09	Civil M&R Technician	00429261	Codal formalities for recruitment not followed i. No Advertisement in local or National Daily News Papers. ii. No Selection Committee constituted for the purpose. iii. No Interview/written/skill tests iv. No NOC obtained from DCO DIKhan for adjustment of Surplus -Pool staff. v. No formal approval from competent authority.(DGHS) vi. MS Having no power of recruitment for BPS-1 to 15. vii. No power of recruitment through employment exchange for BPS- 1 to 4 till 03-11-2008. viii. Having No service record till March 2009.	Posted as Electrical M&R Technician (No such Post exists) while the approved post is of Civil M&R Technician.
2.	Muhammad Mehran	09	M&R Technician	00429264	Do	Do
3.	Najeeb Ullah	07	Junior Clerk	00429251	Do	No practical Experience
4.	Muhammad Anwar	05	Telephone Operator	00433203	Do	Do

**ATTESTED**  
✓

**ATTESTED**

15.	Anwar Muhammad	01	Attendani Ward	00429252	120	
14.	Muhammad Imran	01	Attendani Ward	00429260	120	
13.	Yousef Hayat	01	Attendani Ward	00429265	120	
12.	Abdur Rasheed	01	Chowkidar	00433569	120	
11.	Rukhsana Bibi	02	Dai	00429255	120	Do
10.	Rukhsana Begum	02	Dai	00429256	120	Do
9.	Tasbeem Bibi	02	Dai	00429254	120	Do
8.	Sajida Bibi	02	Dai	00429253	120	Do
7.	Farida Bibi	02	Dai	004333202	120	Approval for Dat Training iii. Having no course completion certificate iii. No qualification Certificate from Prov Assist Director Public Health iv. Having No result sheet from Prov. Assis Director Public Health
6.	Muhammad Sharif	01	Fire Man	00429257	120	
5.	Sajid Khan	05	Operator	00433261	120	

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16.	Muhammad Ali	01	Ward Attendant	00429258	Do
17.	Muhammad Fahem	01	Ward Attendant	00429252	Do
18.	Muhammad Ali	01	Ward Attendant	00431092	Do
19.	Muhammad Irfan	01	Ward Attendant	00429263	Do
20.	Muhammad Sajid	01	Cleaner	00431094	Do
21.	Shah Nawaz	01	Cleaner	00431093	Do
22.	Bashir	01	Ward Attendant	00429259	Do
23.	Ikhtlaq Ahmad	01	Ward Attendant	00429266	Do

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Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

No. MMM-301/2009  
CC: -

Dated 02-06-09

1. Director General Health Services NWFP Peshawar for information with reference to his office letter No cited above.
2. District Accounts Office DIKhan for information and necessary action.
3. Deputy Medical Superintendent Admn/Human Resources of this Hospital with reference to enquiry office No. 649/DMS/E-9 dated 11-04-2009.
4. All employees concerned with the remarks to deposit the salaries received by them up till now to the Government Treasury immediately.

Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

**ATTESTED**

*[Signature]*

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 861/2010

Date of institution ... 28.4.2010  
Date of judgment ... 05.4.2012.

M. Kamran Saleem, Ex-M&R Tech:  
MMT Hospital, D.I.Khan.



(Appellant)

VERSUS

1. The Secretary Health Department NWFP (KPK), Peshawar.
2. The Director General Health Services NWFP (KPK), Peshawar.
3. The Medical Superintendent Mufti Mehmood Hospital, D.I.Khan.
4. The Distt: Accounts Officer, D.I.Khan.
5. The Chief Executive, Mufti Mehmood Teaching Hospital, D.I.Khan. (Respondents)

APPEAL U/S 4 OF THE NWFP(KPK) SERVICE TRIBUNALS ACT, 1974  
AGAINST THE ILLEGAL TERMINATION ORDER DATED 8.6.09  
WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM  
SERVICE WITHOUT FOLLOWING PROPER PROCEDURE AND  
AGAINST THE FINAL REJECTION ORDER DATED 31.3.10 PASSED ON  
THE DIRECTION OF THE HON'BLE SERVICE TRIBUNAL.

Mr. Muhammad Asif Yousafzai,  
Advocate.

Mr. Sherafgan Khattak, AAG

Mr. Qalandar Ali Khan  
Mr. Sultan Mehmood Khattak,

For appellant

For respondents.

Chairman  
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:-

This single judgment shall also

dispose of the connected appeals, listed separately in the list annexed to this judgment, because similar questions have been raised for determination in all these appeals.

2. The appellant in this appeal as well as appellants in the connected appeals, mentioned above, were appointed on various posts i.e. M&R Technician/Junior Clerk/Ward Attendant/Cleaner/Dai/Fireman, respectively, in Mufti Mehmood Teaching Hospital, D.I.Khan by the Medical Superintendent, MMM Teaching Hospital, D.I.Khan (Respondent No.3) vide his separate orders dated 25.10.2008. After their appointment, the appellants got themselves medically examined and submitted their arrival reports; but vide memo. dated 11.3.2009, the M.S. (Respondent No.3) requested the District Accounts

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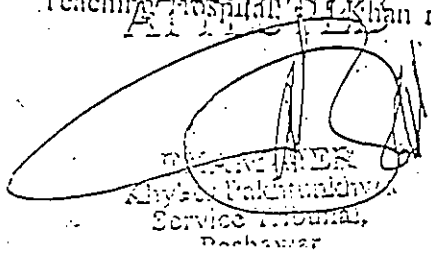
EXAMINER  
Kyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

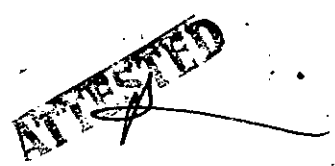
ATTESTED  
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Officer, D.I.Khan to stop pay of 23 persons mentioned in the list/memo. on the ground that they were recruited, violating the rules and regulation of recruitment'; and that the 'staff is physically not present on duty. No any NOC is obtained from District Government. Moreover their service record including service books, appointment orders, medical fitness etc. are not available in this office'. All the persons mentioned in the memo. approached Peshawar High Court, D.I.Khan Bench through Writ Petition, which treated the Writ Petition as representation on behalf of the petitioners and remitted 'the same to Director General Health NWFP, Peshawar/respondent No.2 with direction to decide the same positively by 30<sup>th</sup> June 2009 after hearing the petitioners or their learned counsel Khan Askar Afridi Advocate'. The Hon'ble Bench of the Peshawar High Court D.I.Khan Bench further observed in the judgment dated 9.6.2009 that in case their grievance was not redressed, they would be at liberty to move afresh the appropriate Service Tribunal in the matter. However, vide office order dated 8.6.2009, the Medical Superintendent, while referring to the letter of Director General Health Services, NWFP, Peshawar dated 15.5.2009, terminated services of all the said 23 persons with effect from the date of posting (appointment) on 25.10.2008 on the ground of their appointments being made 'without observing codal/legal formalities before making appointments'. In the meantime, the appellants lodged appeals for release of their pay, which were withdrawn after termination order dated 8.6.2009, and disposed of as withdrawn by this Tribunal vide order dated 31.12.2009. The appellants also preferred departmental appeals to the Director General Health Services, NWFP, Peshawar (Respondent No.2), which were rejected vide letter of the D.G Health to the M.S, MMTH, D.I.Khan dated 31.3.2010, hence these appeals on 28.4.2010 and 19.7.2010, respectively. It may be added here that two inquiries, one by Deputy Medical Superintendent (DMS):MMTH, D.I.Khan on the direction of M.S, MMTH, D.I.Khan and the other by the Executive District Officer(Health) Kohat on the direction of D.G Health Services, NWFP, Peshawar, were also conducted; and both the inquiry officers submitted their reports. In the first inquiry report, the DMS, MMM Teaching Hospital, D.I.Khan recommended that 'although, the appointments have been

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 Service Tribunal,
   
 Peshawar


  
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made without observing codal/legal formalities before making appointments/filling of these posts, all these new recruitments have drawn their salaries from the Government exchequer from 01.11.2008 onwards for four consecutive months up till February 2009. So these appointments made may be legalized through formal approval from Director General Health Services NWFP Peshawar or otherwise". While in the second inquiry report, the EDO(H) Kohat recommended that "All the Class-IV employees(20 in Nos in the complaint) recruited, their services should be restored and their pay be released as no fault exists on their part. So far as the case of two M&R Tech. and one Junior Clerk are concerned their service should not be restored".

3. The appeals have been lodged on the grounds that the impugned order of termination, rejection order and stoppage of pay were illegal, against law, rules, norms of justice and passed without observing proper procedure and principles of justice; that the impugned orders passed by the respondent-department were in utter violation of principle of 'Audi alteram partem' and the Supreme Court of Pakistan had held in numerous judgments that this principle was to be read in every statute even not specifically provided for; that the appellants have been condemned unheard and no chance of personal hearing was provided to them while passing the impugned orders; that in case of termination, charge sheet and statement of allegations were must and mandatory as per provisions of law but in the case of appellants no such provision of law was followed, thus the termination order was totally illegal and void ab-initio; that the appointment orders of the appellants were in the field for considerable long time and under the principle of 'locus-poenitentiae', the appellants had acquired valuable rights in pursuance to the appointment orders which could not be infringed; that the termination order was based on malafide as after termination of the appellants some persons were appointed by respondent No.3 without observing codal formalities; that two inquiries were conducted in the matter and in both the inquiries reinstatement of the appellants was recommended; and that the final rejection order was against the judgments of the Supreme Court of Pakistan, requiring the departmental authority to furnish well founded reasons for its order.

ATTESTED

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4. While District Accounts Officer, D.I.Khan (Respondent No.4) showed his no concern with the appeals and requested for deletion of his name from the list of respondents in his reply, the rest of the respondents vehemently contested the appeals in their written replies, wherein, they raised several legal and factual objections. They resisted the appeals on the grounds that neither the appellants were qualified nor No Objection Certificate, necessarily required for fresh recruitment, was obtained from DCO D.I.Khan. They claimed that competent authority for such fresh recruitment was Director General Health Services, KPK, Peshawar and that the appointments were made without inviting applications through press. The respondents also defended the impugned action of termination of services of the appellants and also rejection of their departmental appeals. They alleged that the appellants had also absented themselves from official duty, therefore, their salaries were stopped after they were served with notices and opportunity of hearing was provided to them. They further claimed that appointments were made purely on contract basis and services were, as such, liable to termination at any time without giving any notice and assigning any reason. The respondents also disputed claim of the appellants that inquiry officers had recommended restoration of their services.

5. The appellants filed rejoinders to the written replies/comments of the respondents, wherein, the contentions raised in the appeals were reiterated, besides refuting allegations of the respondents; where-after, arguments of the learned counsel for the appellants and learned AAG heard, and record perused.

6. The record would reveal that the appellants were appointed on the mentioned posts by the Medical Superintendent, Mufti Mehmood Teaching Hospital, D.I.Khan vide his separate orders dated 25.10.2008. The appellants got themselves medically examined and submitted their arrival reports. Though the respondents raised the plea that the appointments were made purely on contract basis and the service were liable to termination at any time without giving any notice and assigning any reason, yet they had no explanation when they were confronted with the judgment dated 9.6.2009 of the

ATTESTED

ATTESTED  
 MEMBER  
 Peshawar  
 Service Tribunal,  
 Peshawar



Peshawar High Court, D.I.Khan Bench, whereby the appellants were declared civil servants; and thereafter the issue was also not pressed further at the stage of arguments.

The respondents, particularly respondent No. 3, after around five months of the appointment, requested the District Accounts Officer, D.I.Khan for stoppage of pay on 11.3.2009 in the first place and then the same authority issued termination order of all the appellants and few others w.c.f their posting/appointment on 25.10.2008, vide his impugned order dated 8.6.2009. The departmental appeals of the appellants were also rejected by the appellate authority i.e Director General Health Services (respondent No. 2) summarily, in the like manner, without furnishing any reason for rejection of the appeals.

7. It is thus clear that neither charge sheet/statement of allegation nor show cause notice preceded the impugned action of termination of services. In their written reply, the respondents alleged that appellants were charge sheeted and statement of allegations were issued to them during inquiry proceedings, besides publication of notices, but they could not place on record either the charge sheet/statement of allegation or notices issued to the appellants. The record contains two inquiry reports, one by Deputy Medical Superintendent, MMM Teaching Hospital, D.I.Khan and the other by EDO (H) Kohat; but neither of the two indicate that the appellants were provided opportunity of defence and hearing. In any case, both were fact findings inquiries and could not form basis for termination of services of the appellants in the absence of service of charge sheet/statement of allegation and show cause notices on the appellants prior to the termination of their services. Needless to say that the competent authority did not pay heed to the recommendations of these two inquiry officers for restoration of the services of the appellant and release of their pay 'as no fault existed on their part'; and, instead, terminated services of the appellants without conducting proper departmental/inquiry proceedings and providing opportunity of defence and hearing to the appellants in accordance with law/rules and judgments of the superior courts reported as 2007 PLC (CS)334 (Supreme Court of Pakistan), 2009 SCMR 663 (Supreme Court of Pakistan) and 1994 SCMR 2232 (Supreme Court of Pakistan).

**ATTESTED**

**ATTESTED**

Secretary  
 Peshawar  
 Service Tribunal  
 Peshawar

8. The respondents vehemently agitated the issue of appointment of the appellants, allegedly, without observing proper procedure and in violation of clear rules; but they lost sight of the fact that authority making such appointments should have been held responsible for illegality, if any, in the appointments and not beneficiary of the appointments in view of consistent view of the superior courts (2004 SCMR 1077- Supreme Court of Pakistan). Even otherwise, once the order had taken legal effect and created certain rights in favour of the appellant, it could not be withdrawn or rescinded in view of judgment reported as 2003 SCMR 410 ( Supreme Court of Pakistan). In these cases, the appellant, admittedly, not only reported their arrival, after medical examination, but had also drawn salary for certain period. The impugned order dated 08.06.2009 also suffers from illegality on account of the fact that the same has been given effect from a retrospective date i.e 25.10.2008, in view of clear judgments of the superior courts reported as PLD 2007 SC 52 (f) and 2002 SCMR. 1124(c)(Supreme Court of Pakistan).

9. Apart from inherent legal defects in the proceedings leading to the impugned termination order, the appellate authority also failed to follow law and judgments of the superior courts while disposing of the departmental appeals of the appellants as the appeals were rejected in a summary way without furnishing any reason in violation of the provision of section 24-A(2) of the General Clauses Act, 1897 and judgment of the august Supreme Court of Pakistan reported as 1991 SCMR 2330 (Supreme Court of Pakistan).

10. The learned AAG also argued that services of the appellants were terminated during probation period; but he could not show anything to that effect in the impugned order, which is simply based on the ground that the appointments/recruitments were made without observing codal/legal formalities.

11. In short, the appellants have not been dealt with in accordance with law, and the impugned orders against them, as such, are not sustainable in law.

12. Consequently, on the partial acceptance of the appeals, both the orders of the competent authority dated 8.6.2009 and appellate authority dated 31.3.2010 are set aside,

**ATTESTED**

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and appellants are reinstated for the purpose of proper departmental proceedings, without any order with regard to back benefits, with direction to the respondent-department to proceed afresh in the case in accordance with law and also provide opportunity of showing cause/hearing before passing any order detrimental to the interest of the appellants. There shall, however, be no order as to costs.

25

ANNOUNCED  
05.4.2012

(SULTAN MEEMOOD KHATTAK)  
MEMBER

(QALANDAR ALI KHAN)  
CHAIRMAN

Certified to be true copy

SECRETARY  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10.4.2012  
Number of Marks 2800  
Copying Fee 16  
Urgent 2  
Total 18  
Name of Applicant [Signature]  
Date of Copying Fee 10.4.2012  
Date of Delivery of Copy 10.4.2012

**ATTESTED**

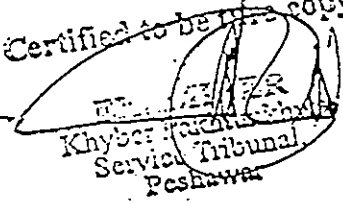
LIST OF CONNECTED APPEALS.



26

S.NO.	APPEAL NO.	NAME OF APPELLANT
1.	S62/2010	Muhammad Mehran
2.	S63/2010	Najeebullah
3.	S64/2010	Ikhlaq Ahmad
4.	S65/2010	Shah Nawaz
5.	S66/2010	Bashir
6.	S67/2010	Mohammad Imran
7.	S68/2010	Yousaf Hayat
8.	S69/2010	Rukhsana Bibi
9.	S70/2010	Mohammad Fahim
10.	S71/2010	Mohammad Bilal
11.	S72/2010	Mohammad Sajid
12.	S73/2010	Mohammad Shafique
13.	S74/2010	Rukhsana Begum
14.	S75/2010	Farida
15.	S76/2010	Sajida Bibi
16.	S77/2010	Tasleem Bibi
17.	S78/2010	Mohammad Irfan
18.	S79/2010	Mohammad Ali
19.	1487/2010	Mohammad Anwar

Certified to be true copy



Number of Pages of Affidavit 400  
 Number of Affidavits 4  
 Copies of Affidavits 2  
 Total 406  
 Name of Copy 10-4-2012  
 Date of Completion of Copy 10-4-2012  
 Date of Delivery of Copy 10-4-2012

**ATTESTED**



Office of the  
Medical Superintendent

Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan

H  
27

0966-747111

OFFICE ORDER

Reference Honorable Court of Service Tribunal Khyber Pakhtunkhwa Peshawar vide their judgment in service Appeal No. 851/2010 & other announced on 05-04-2012.

The following Appellants are re-instated for the purpose of departmental proceedings without any orders with regard to back benefits with immediate effect.

S.No	Name	Father's Name	Designation
1	Mr. Kamran Saleem	Allah Nawaz Saleem	M&R Technician (Electrical) (BPS-09)
2	Mr. Mohammad Mehran	Muhammad Younas	M&R Technician (Electrical) (BPS-09)
3	Mr. Najeed Ullah	Hameed Ullah	Junior Clerk (BPS-07)
4	Mr. Shan Nawaz	Haq Nawaz	Cleaner (BPS-01)
5	Mr. Bashir	Muhammad Nawaz	Ward Attendant (BPS-02)
6	Mr. Mohammad Imran	Malik Siraj-u-Din	Ward Attendant (BPS-02)
7	Mr. Yousef Hayat	Abdul Aziz	Ward Attendant (BPS-02)
8	Miss Rukhsana Bibi	W/O Muhammad Shakir	Daii (BPS-02)
9	Mr. Mohammad Faeem	Ghulam Yasin	Ward Attendant (BPS-02)
10	Mr. Mohammad Bilal	Rabnawaz	Ward Attendant (BPS-02)
11	Mr. Mohammad Sajid	Muhammad Sadiq	Cleaner (BPS-01)
12	Mr. Mohammad Shafiq	Qazi Muhammad Ishaq	Fire Man (BPS-01)

ATTESTED

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Name	Father's Name	Designation
Miss Rukhsana Begum	W/O Maqsood Anwar	Dai (BPS- 02)
Miss. Farida Btoi	Dilawar Khan	Dai (BPS- 02)
Miss Saida Btoi	Faiz Ullah	Dai (BPS- 02)
Miss. Farida Btoi	W/O Muhammad Saleem	Dai (BPS- 02)
Mr. Muhammad Inan	Muhammad Nawaz	Ward Attendant (BPS- 02)
Mr. Mohammad Ali	Rasheed Ali	Ward Attendant (BPS- 02)
Abdur Rashid	Ameer Muhammad	Chowkidar (BPS-01)
Muhammad Anwar Khan	Rab Nawaz Khan	Telephone Operator (BPS-07)

Medical Superintendent  
Musti Mahmood Memorial Teaching Hospital  
Dera Ismail Khan

25-49/11/2012 /Litt:

Dated DIKhan the 29/11/2012

Forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa Peshawar, with reference to their letter No. 5514/P dated 30-08-2012.
2. Chief Executive/Principal Gomal Medical College DIKhan, with reference to their letter No. 33-35/Esstt/PF dated 28-11-2012.
3. P.O. to Secretary Health Government of Khyber Pakhtunkhwa Peshawar.
4. District Accounts Officer, DIKhan.
5. Accountant MMM Teaching Hospital DIKhan.
6. A concerned.

(For information and necessary action please)



Medical Superintendent  
Musti Mahmood Memorial Teaching Hospital  
Dera Ismail Khan

ATTESTED

Office of the  
Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan.

**ORDER**

Reference Honourable Court of the Service Tribunal Khyber Pakhtunkhwa Peshawar vide their judgment in service appeal No. 861/2010 & other announced on 50-04-2012.

The following Appellant are re-instated for the purpose of departmental proceeding without any orders with regard to back benefits with immediate effect.

S.NO	Name	Father's Name	Designation
1.	Mr. Kamran Saleem	Allah Nawaz Saleem	M&R Technician (Electrical) (BPS-09)
2.	Mr. Mohammad Mehran	Muhammad Younas	M&R Technician (Electrical) (BPS-09)
3.	Mr. Najeeb Ullah	Hameed Ullah	Junior Clerk (BPS-07)
4.	Mr. Shah Nawaz	Haq Nawaz	Cleaner (BPS-01)
5.	Mr. Bashir	Muhammad Nawaz	Ward Attendant (BPS-02)
6.	Mr. Mohammad Imran	Malik Siraj-u-Din	Ward Attendant (BPS-02)
7.	Mr. Yousaf Hayat	Abdul Aziz	Ward Attendant (BPS-02)
8.	Miss Rukhsana Bibi	w/o Muhammad shakir	Dai (BPS-02)
9.	Mr. Mohammad Faheem	Ghulam Yasin	Ward Attendant (BPS-02)
10.	Mr. Mohammad Bilal	Rab Nawaz	Ward Attendant (BPS-02)
11.	Mr. Mohammad Sajid	Muhammad Sadiq	Cleaner (BPS-01)
12.	Mr. Mohammad Shafiq	Qazi Mohammad Ishaq	Fire Man (PBS-01)
13.	Miss Rukhsana Begum	W/O Maqsood Anwar	Dai(BPS-02)
14.	Miss Farida Bibi	Dilaqar Khan	Dai (BPS-02)
15.	Miss Saida Bibi	Faiz Ullah	Dai(BPS-02)
16.	Miss Tasleem Bibi	W/O Muhammad Saleem	Dai (BPS-02)
17.	Mr. Mohammad Irfan	Muhammad Nawaz	Ward Attendant (BPS-02)
18.	Mr. Mohammad Ali	Rasheed Ali	Ward Attendant (BPS-02)
19.	Abdur Rashid	Ameer Mohammad	Chowkidar (BPS-01)



0966-7471  
0966-7471  
0966-7471

Office of the  
Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan

I (23)

Office Order:-

On the recommendation of Enquiry Officer's, the following staff of Mufti Mehmood Memorial Teaching Hospital Dera Ismail Khan are herewith terminated with immediate effect, after fulfilling all the codal formalities, including departmental Enquiry, Show Cause Notice published in Daily Newspaper's, detail as under:-

S.No.	Name	Designation	BPS	Reason for Termination
	Mr. Mohan nad Mehran	M&R Technician (Electrical)	BPS-09	No Sanctioned Post available.
	Mr. Mohan nad Mehran	M&R Technician (Electrical)	BPS-09	No Sanctioned Post available.
	Mr. Najeb Ullah	Junior Clerk	BPS-07	No codal formalities for recruitment observed.
	Miss Rukh ana Begum	Dai	BPS-02	* No codal formalities for recruitment observed.
	Miss. Rukh ana Bibi	Dai	BPS-02	* Recruited against fake certificates. * No codal formalities for recruitment observed.
	Miss. Rukh ana Bibi	Dai	BPS-02	* Recruited against fake certificates. * No codal formalities for recruitment observed.
	Miss Tasneem Bibi	Dai	BPS-02	* Recruited against fake certificates. * No codal formalities for recruitment observed.
	Miss Rukh ana Bibi	Dai	BPS-02	* Recruited against fake certificates. * No codal formalities for recruitment observed.
	Mr. Ikhlas Ahamd	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
	Mr. Bahir	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
		Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.

**ATTESTED**



Name	Designation	BPS	Reason for Transfer
Mr. Mohammad Anwar	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
Mr. Mohammad Bilal	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
Mr. Mohammad Irfan	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
Mr. Mohammad Ali	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
Mr. Mohammad Shafiq	Fire Man	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
Mr. Mohammad Sajid	Sweeper/Cleaner	BPS-01	* No codal formalities for recruitment observed. * No vacant post available.
Mr. Shan Nawaz	Sweeper/Cleaner	BPS-01	* No codal formalities for recruitment observed.

Medical Superintendent  
Mufti Mahmood Memorial Teaching Hospital  
Dera Ismail Khan

23/02/2013 /Estt: Dated DIKhan the 12/01/2013

Copy forwarded to the:

- Secretary Department of Health, Government of Khyber Pakhtunkhwa Peshawar.
- Director General Health Services Khyber Pakhtunkhwa Peshawar.
- Chief Executive/Principal Gomal Medical College DIKhan.
- District Accounts Officer, DIKhan.
- Deputy Medical Superintendent H/R MMM Teaching Hospital DIKhan.
- Accountant MMIM Teaching Hospital DIKhan.
- All concerned for information.

(For information and necessary action please)

**ATTESTED**

Mufti Mahmood Memorial Teaching Hospital  
Dera Ismail Khan

Better Copy      Annexure-I

Office of the  
Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan.

ORDER

On the recommendation of enquiry officer's the following staff of Mufti Mahmood Memorial Teaching hospital are herewith terminated with immediate effect, after fulfilling all the codal formalities including Departmental enquiry, show cause notice, published in daily Newspaper's detail as under:

S.NO.	Name	Designation	BPS	Reason for Termination
1.	Mr. Kamran saleem	M&R Technician (Electrical)	BPS-09	No sanctioned [post available
2.	Mr. Mohammad Mehran	M&R Technician (Electrical)	BPS-09	No sanctioned post available
3.	Mr. Najeeb ullah	Junior Clerk	BPS-07	No codal formalities for recruitment observed
4.	Miss rukhsana Begum	Dai	BPS-02	*No codal formalities for recruitment observed *recruited against the fake certificates
5.	Miss farida Bibi	Dai	BPS-02	*No codal formalities for recruitment observed *recruited against the fake certificates
6.	Miss sadia Bibi	Dai	BPS-02	*No codal formalities for recruitment observed *recruited against the fake certificates
7.	Miss Tasleem Bibi	Dai	BPS-02	*No codal formalities for recruitment observed *recruited against the fake certificates
8.	Miss Rukhsana Bibi	Dai	BPS-02	*No codal formalities for recruitment observed *recruited against the fake certificates
9.	Mr. Ikhtlaq Ahmad	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
10.	Mr. basher	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
11.	Mr. Mohammad Imran	Ward attendant	BPS-01	*Over & above

				recruitment against sanctioned strength * No codal formalities for recruitment observed
12.	Mr. yousaf hayat	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
13.	Mr. Muhammad faheem	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
14.	Mr. Muhammad Bilal	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
15.	Muhammad irfan	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
16.	Mr. mohammad Ali	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
17.	Mr. Mohammad Anwar	Ward attendant	BPS-01	*Over & above recruitment against sanctioned strength * No codal formalities for recruitment observed
18.	Mr. Mohammad shafiq	Fire man	BPS-01	*No codal formalities for recruitment observed * No vacant post available
19.	Mr. Mohammad sajid	Sweeper/ Cleaner	BPS-01	No codal formalities for recruitment observed
20.	Mr Shah Nawaz	Sweeper/ Cleaner	BPS-01	No codal formalities for recruitment observed

Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan

No 23-62/01/2013/Estt: Dated DIKhan the 12/01/2013

*Copy forwarded to the:*

1. Secretary Department of Health, Govt: of Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Chief Executive/ Principal Gomal Medical College DIKhan.
4. District accounts Officer, DIKhan.
5. Deputy Medical Superintendent H/R MMM Teaching Hospital DIKhan.
6. Accountant MMM Teaching Hospital DIKhan.
7. All concerned for information.

(For information and necessary action please)

Medical Superintendent  
Mufti Mehmmod Memorial Teaching Hospital  
Dera Ismail Khan

The Chief Executive,  
Gomal Medial College  
D.I.Khan.

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J (31)

Through: Proper Channel.

Subject: DEPAETMENTAL APPEAL AGAINST ILLEGAL TERMINATION FROM SERVICE

Respected Sir,

The appellant humbly submits as under:

1. That the appellant being eligible and having required qualification was appointed by the Medical Superintendent, Mufti Mehmood Memorial Hospital D.I.Khan after due course/ process of recruitment.
2. That, after furnishing Medical Fitness Certificate and taking over the charge of said post, the appellant started performing her official duties regularly with due diligence, care devotion and to the satisfaction of superiors and leave no stone unturned in performance of his/her official duties.
3. That during the period the services rendered by the appellant remained up-to the mark and no deficiency, inefficiency, negligence or irregularity of the appellant was reported.
4. That, due to the political influence, the M.S of MMMH while referring to the letter of director general health services, terminated the applicant.
5. That feeling aggrieved from the illegal termination orders of M.S MMMH D.I.Khan, the appellant filed an appeal along with others before learned Service Tribunal, who after hearing the counsel for the parties, accepted the appeal of appellants on 05-04-2012, set aside the orders and reinstated the appellant for the purpose of departmental proceedings with direction to

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the department to proceed afresh in the case in accordance with law by providing opportunity of show cause/hearing before passing any order.

6. That M.S of MMMH D.I.Khan without reinstating the appellant, issued fresh termination order dated 12-01-2013 which is received on 16-01-2013. It is also patient to mentioned here that after receiving the termination, the back dated reinstatement order was received on 29-01-2013.
7. That M.S MMMH D.I.Khan did not issue any charge sheet, nor issue any show cause notice and without providing any opportunity of hearing according to the Judgment of Hon'ble Service Tribunal illegally terminated the applicant.

In wake of above submissions, it is respectfully prayed that on acceptance of instant appeal, the termination orders may please be set aside and appellant may graciously be re-instated with all back/future benefits

M. Bilal

Your Honorable Appellant

محمد بلال ولد محمد بنواری  
چاہ نکل شاہ ، سہ ماہی آباد  
ڈاکٹر جی پلاو ڈیرہ

Note: That this appeal is being filed directly to the Chief Executive as the Office of M.S MMMH D.I.Khan, was reluctant to forward this appeal, being through proper channel.

1. Copy to the Director General Health Services Peshawar.

ATTESTED

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	16.10.2015	<p style="text-align: center;"><b>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL. PESHAWAR.</b></p> <p>1. Appeal No. 992/2013, Muhammad Imran  2. Appeal No. 993/2013, Muhammad Ali  3. Appeal No. 994/2013, Muhammad Bilal  4. Appeal No. 995/2013, Muhammad Ifran  5. Appeal No. 996/2013, Bashir  6. Appeal No. 997/2013, Yousaf Hayat  7. Appeal No. 998/2013, Najeeb Ullah  8. Appeal No. 999/2013, Muhammad Anwar &amp;  9. Appeal No. 1000/2013, Rukhsana Begum</p> <p style="text-align: center;">Versus</p> <p style="text-align: center;">The Secretary Health Deptt: Govt of Khyber Pakhtunkhwa Peshawar &amp; others.</p> <p style="text-align: center;"><b>JUDGMENT</b></p> <p><b>PIR BAKHSH SHAH, MEMBER.-</b> Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present.</p> <p>2. Previously appeals of the appellant were remanded to the respondent department by this Tribunal vide its judgment dated 05.04.2012 with the following directions:-</p> <p>“Consequently, on the partial acceptance of the appeals, both the orders of the competent authority dated 08.6.2009 and appellate authority dated 31.3.2000 are set aside, and appellants are reinstated for the purpose of proper departmental proceedings, without any order with regard to back benefits, with direction to the respondent department to proceed afresh in the case in accordance with law and also provide opportunity of showing cause/hearing before passing any order detrimental to the interest of the appellants. There shall, however, be no order as to costs.”</p>

*Signature*

**ATTACHED**

3. Record shows that after this order of the Tribunal the respondent department constituted an enquiry committee, who submitted its report, without associating the appellants in the proceedings. The respondent department in the light of this enquiry report issued show cause notice to the appellants through daily publication and without giving them opportunity of defence or personal hearing. Consequently, they were once again removed from service. Their departmental appeals were also not responded, hence again these service appeals.

4. Arguments heard and record perused.

5. It reveals from record that after decision of appeals by this Tribunal, the respondent department has neither ensured presence of the appellants for the purpose of de-novo proceedings nor they have been given any chance of defence or personal hearing. It is thus evident that the respondent department has failed to follow judgment of the Tribunal in letter & spirit. This has resulted into miscarriage of natural justice as no opportunity of defence or personal hearing was provided to the appellant. According to the plea of respondent department, the inquiry committee was constituted in pursuance of the direction of the Tribunal but if this committee was constituted for the purpose of proper regular departmental inquiry against the appellants, then

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**ATTESTED**



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in that case the respondent department should have issued and served the appellants with charge sheet and statement of allegations. There is no concept of proper and regular departmental inquiry without issue of the charge sheet and statement of allegations. In the opinion of this Tribunal the present inquiry seems to be a fact finding inquiry. Undoubtedly, the respondent department could dispense with regular inquiry but in that case it should have given reasons for it and as it was not a case of willful absence, therefore, the department should have ensured direct service of the show cause notice instead of substituted service.

6. For the said reasons the Tribunal is of the considered opinion to remit the case to the appellate authority with the direction to examine it and decide departmental appeals of the appellants as soon as possible but not later than 2 month, after receipt of this judgment. By this single judgment, all the appeals are disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record.

sd

Pir Bakht Shah  
member

sd

Abdullahatif  
member

ATTESTED

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26/10-2015

sd

L (36)



**DIRECTORATE GENERAL HEALTH SERVICES**  
**KHYBER PAKHTUN KHWA PESHAWAR**

E-Mail Address: [nwfidghs@yahoo.com](mailto:nwfidghs@yahoo.com) office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-92102309. M.M.M. D.I.K.

**OFFICE ORDER**

Diary No. 179  
Dated 28/01/16

1. WHEREAS Disciplinary proceeding under E & D Rules 2011, initiated against Mr. Muhammad Bilal Ex: Ward Attendant attached to MMM Teaching Hospital D.I Khan, on account of his irregular appointment by the M.S MMM Teaching Hospital D.I Khan.
2. WHEREAS, an Enquiry was conducted against him through Enquiry Committee.
3. WHEREASE, after publication of the show cause notice in the Daily News Paper their services were terminated by the M.S MMM Teaching Hospital D.I Khan.
4. WHEREAS, he lodged appeal against his termination order to the appellate authority viz: DGHS Khyber Pakhtunkhwa, but the same having no force was rejected vide DGHS letter No. 1508/Personnel dated 13.03.2010.
5. WHEREAS, he went into appeal before the Peshawar High Court Peshawar D.I Khan Bench.
6. WHEREAS, in pursuance of the Judgment of the above court passed in appeal No. 994/2013 dated 16.10.2015, he was given opportunity of defending himself and personal hearing.
7. AND WHEASEAS, he failed to justify his illegal appointment issued in the contravention of Appointment Promotion Transfer Rules 1989.
8. Therefore I in my capacity as Appellate authority hereby reject the case for re-instatement in service.


Sd/xxxxxxxxx  
DIRECTOR GENERAL HEALTH  
SERVICES, K.P.K, PESHAWAR.  
Dated 18/01/2016.

No. 313-17/Personnel.

Copy forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. M.S MMM Teaching Hospital D.I Khan.
3. AD (Lit) DGHS, Khyber Pakhtunkhwa Peshawar w/r to his letter No. 4331-32/AD(Lit) dated 30.10.2015.
4. DAO D.I Khan.
5. Official concerned.

For information and necessary action.

  
15/1/16  
DIRECTOR GENERAL HEALTH  
SERVICES, K.P.K, PESHAWAR.

21/13/1/2016

Hafz S.M Ali Shah

**ATTENDED**

Reg  
C/O

From:

Deputy Medical Superintendent  
(Enquiry Officer)  
MMM Teaching Hospital  
Dera Ismail Khan

No. 648 / 11-10-2009  
Dated: 11/10/2009

To

The Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

Subject: ENQUIRY REGARDING RECRUITMENTS MADE AT MUFTI MEHMOOD MEMORIAL TEACHING HOSPITAL, DIKHAN IN VIOLATION OF RULES OF RECRUITMENT.

TERMS OF REFERENCE:-

That the staff as per list attached appointed on 25-10-2008 are recruited in violation of the rules of recruitment.

Annexure -A

Description

The following 23 no appointments in deferent categories were made on 25-10-2009 under the signature of then Medical Superintendent Multi Mehmood Memorial Teaching Hospital DIKhan.

- 02 appointments in BPS-09 as M&R Technician
- 01 appointment in BPS 07 as Junior Clerk.
- 01 appointment in BPS- 06 as Telephone Operator.
- 01 appointment in BPS -05 as Generator Operator.
- 05 appointments in BPS-02 as Dais.
- 01 appointment in BPS- 01 as Fireman.
- 01 appointment in BPS- 01 as Chowkidar.
- 09 appointment in BPS- 01 as Ward Attendant.
- 02 appointment in BPS- 01 as Cleaner.

Since their appointments (except one Mr. Muhammad Kamran M& R Technician) no one turned up for duties at the Hospital till the last week of March.

All the candidates appointed for the above mentioned different categories in Multi Mehmood Memorial Teaching Hospital DIKhan submitted their arrival report on the same day i.e. 01-11-2008.

No record pertaining to their appointments was available in this office, for which the Steno/Accountant of this office was asked in verbal and then in written twice Vide No 375/76 dated 16-03-2009 and no-427/PF dated 21-03-2009 for production of said record so as to proceed further.

Copy attached for ready reference.

Annexure- B-C

In response, on 25-03-2009, a file containing appointment orders along with certain correspondence letters of Finance Department, Employment Exchange and Employment Exchange Registration Cards was handed over to the undersigned Vide Mr. Abdul Manan Steno grapher/Accountant letter No nil dated 24-03-2009.

**ATTESTED**

Copy of letter from Abdul Manan attached for Ready Reference

Annexure- D

However other records pertaining to these appointments i.e. advertisement, applications of the candidates, service books, interview list, selection committee members list, merit list not available on the record of this office:

It was also learnt that service books which were initially not available with the concerned clerk were later on handed over by Mr. Atta Ullah Computer Operator of this office to the concerned clerk.

All these employees under enquiry were asked to appear before the enquiry officer from 24<sup>th</sup> to 28<sup>th</sup> March vide this office letter No.375-76-dated 16-03-09 through DMS Human Resource of this Hospital.

(Letter already attached as Annexure- B)

05 days time given for personal appearance was due to the fact that these new requirements did not attend their duties since their appointment and even then only 12 out of 23 appeared. The rest either not available as usual or abstained from appearing before the enquiry officer for reason best known to them.

The following had personal appearance:-

1. Muhammad Shafiq S/O Qazi Muhammad Ishfaq	Fire Man
2. Akhlaq Ahmad S/O Mushtaq Ahmad	W/A
3. Muhammad Irfan S/O Muhammad Nawaz	W/A
4. Muhammad Bilal S/O Rab Nawaz	W/A
5. Bashir S/O Muhammad Nawaz	W/A
6. Muhammad Ali S/O Rashid Ahmad	W/A
7. Najeeb Ullah S/O Hamzed Ullah	J/C
8. Shah Nawaz S/O Haq Nawaz	Cleaner
9. Faheem S/O Yasin	W/A
10. Muhammad Kamran S/O Allah Nawaz	M&R Technician
11. Muhammad Anwar S/O Rab Nawaz	T/Operator
12. Muhammad Mehran S/O Muhammad Younes	M&R Technician

ATTESTED

*P*

38

Findings/observations

39

1. Staff drawing salaries against the above posts versus sanctioned strength given in the following table.

Category	No. of Posts drawing pay in October 08	No. of Posts drawing pay in November 08	Sanctioned Posts before Oct,08	Posts Sanctioned During Oct,08	Total Posts as per Budget Book	Excess drawl	Short drawl	Remarks
Ward Attendant	70	78	65	8	73	5		
Chowkidar	15	16	20	1	21	-	5	
Cleaner/Sweeper	29	31	40	-	40	-	9	
Telephone Operator	1	4	5	-	5	-		
Fireman	-	1	1	-	1	-		
Gen : Operators	-	1	1	-	1	-		
J/Clerk	5	6	6	-	4	2		2 Posts of J/Clerk are sanctioned vide Finance Dept. No. BOVI/ED/1-64/005/MMI dated 17-08-2007 but not reflected in Budget Book 2008-09.
Civil Tech:	-	2	-	2	2	-		
Dai	17	22	20	2	22	-		

2. Employment exchange

Employment exchange was requested by then Medical Superintendent Mufli Mehmood Memorial Teaching Hospital DIKhan who is signatory to the appointment orders, to send eligible candidates for appointments in Mufli Mehmood Memorial Teaching Hospital DIKhan for vacancies against Class-IV.

Copy attached for ready reference.

(Annexure-E)

ATTESTED

D

- 40
- No categories and other scales mentioned in the letter.
  - No date for Interview/Selection was intimated to the Manager Employment Exchange.
  - The Manager Employment Exchange provided 02 lists (09 + 14) of candidates (Hand Written) vide his office No. EE/DIK/Appt/127 dated 06-10-2008.

Copy of the letter from Manager Employment Exchange attached for ready Reference. (Annexure-F)

- The registration numbers issued by employment exchange are in the same consecutive order.
- Also there is duplication of registration Nos. as noted from the employment Registration Cards e.g. registration No 15/W/08 dated 08/09/08 for Rukhsana Bibi wife of Muhammad Shaker and the same registration No 15/W/08 dated 13/09/08 for Rukhsana Begum Wife of Maqsood Anwar. Similarly registration No 99/0/08 dated 08/09/08 for Shah Nawaz S/O Haq Nawaz and the same registration No. 99/0/08 dated 08/09/08 for Sajid S/O Sadiq Ali. Also the registration numbers in the hand written list provided by Manager Employment Exchange do not tally with the registration numbers of the registration cards in the above mentioned cases.

So all this raises questions about the entries made in Employment Exchange Registration Cards and the lists provided by Manager Employment Exchange. Copies of the lists along with the above noted Registration Cards for ready reference.

(Annexure-G)

### 3. Appointments Orders:-

The appointments orders are deficient regarding the following prescribed Government criteria.

- The appointments made are without formal advertisement.
- No selection committee duly approved was constituted for the purpose.
- No approval has been sought from Director General Health Services NWFP Peshawar for the selected candidates.
- All these appointees, having received their salaries from 01-11-2008 to Feb/2009, have not attended their duties (Except one Mr. Muhammad Kamran M&R Technician), and are not on the roll call of DMS Human Resource as he was not informed formally about these appointments.
- The appointments are made on 25-10-2008 and all of these employees have submitted their arrival for duty on the same day i.e. 01-11-2008.
- The diary Nos. shown on the appointment orders do not tally with diary/dispatch record of this office. This office diary/dispatch register record shows no diary No for 25-10-2008.
- Most of the appointment orders are attached with recommendations from MPA's and Minister Health NWFP, even some having both. Looking at some of these recommendations, creates doubts in one's mind because it seems that a single recommended application by Minister Health has been tactfully photo copied for a number of applicants probably.

Copies of two such applications recommended by Minister Health NWFP attached for ready reference.

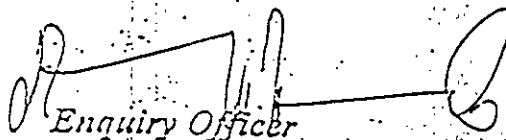
(Annexure-H)

**ATTESTED**

(41)

Conclusion/Recommendation

All though, the appointments have been made without observing codal/legal formalities before making appointments/filling of these posts, all these new recruitments have drawn their salaries from the Government exchequer from 01-11-2008 onwards for four consecutive months up till February 2009. So these appointments made may be legalized through formal approval from Director General Health Services NWFP Peshawar or otherwise.



Enquiry Officer  
Dr. Muhammad Arif Ullah  
DMS (Admin) MMM Teaching Hospital  
Dera Ismail Khan

ATTESTED

★

Deputy Medical Superintendent  
(Enquiry Officer)  
MMM Teaching Hospital  
Dera Ismail Khan

No. 648 /EQ  
Dated: 11/04/2009

Better Copy  
M

To

The Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

Subject: ENQUIRY REGARDING RECRUITMENTS MADE AT MUFTI MEHMOOD MEMORIAL TEACHING HOSPITAL DIKHAN IN VIOLATION OF RULES OF RECRUITMENT.

TERMS OF REFERENCE:-

That the staff as per list attached appointed on 25-10-2008 are recruited in violation of the rules of recruitment.

Annexure -A

Description

The following 23 no appointments in deferent categories were made on 25-10-2009 under the signature of then Medical Superintendent Mufti Mehmood Memorial Teaching Hospital DIKhan.

- 02 appointments in BPS-09 as M&R Technician
- 01 appointment in BPS 07 as Junior Clerk.
- 01 appointment in BPS- 06 as Telephone Operator.
- 01 appointment in BPS -05 as Generator Operator.
- 05 appointments in BPS-02 as Dais.
- 01 appointment in BPS- 01 as Fireman.
- 01 appointment in BPS- 01 as Chowkidar.
- 09 appointment in BPS- 01 as Ward Attendant.
- 02 appointment in BPS- 01 as Cleaner.

Since their appointments (except one Mr. Muhammad Kamran M& R Technician) no one turned up for duties at the Hospital till the last weak of March.

All the candidates appointed for the above mentioned different categories in Mufti Mehmood Memorial Teaching Hospital DIKhan submitted their arrival report on the same day i.e. 01-11-2008.

No record pertaining to their appointments was available in this office, for which the Steno/Accountant of this office was asked in verbal and then in written twice Vide No 375/76 dated 165-03-2009 and no 427/PF dated 21-03-2009 for production of said record so as to proceed further.

Copy attached for ready reference.

Annexure- B-C

In response, on 25-03-2009, a file containing appointment orders along with certain correspondence letters of Finance Department, Employment Exchange and Employment Exchange Registration Cards was handed over to the undersigned Vide Mr. Abdul Manan Steno grapher/Accountant letter No nil dated 24-03-2009.

Copy of letter from Abdul Manan attached for Ready Reference.

Annexure- D

( 23 )



✓  
However other records pertaining to these appointments i.e. advertisement, applications of the candidates, service books, interview list, selection committee members list, merit list not available on the record of this office.

It was also learnt that service books which were initially not available with the concerned clerk were later on handed over by Mr. Atta Ullah Computer Operator of this office to the concerned clerk.

All these employees under enquiry were asked to appear before the enquiry officer from 24<sup>th</sup> to 28<sup>th</sup> March vide this office letter No.375-76 dated 16-03-09 through DMS Human Resource of this Hospital.

(Letter already attached as Annexure- B)

05 days time given for personal appearance was due to the fact that these new requirements did not attend their duties since their appointment and even then only 12 out of 23 appeared. The rest either not available as usual or abstained from appearing before the enquiry officer for reason best known to them.

The following had personal appearance:-

1. Muhammad Shafiq S/O Qazi Muhammad Ishfaq	Fire Man
2. Akhlaq Ahmad S/O Mushlaq Ahmad	W/A
3. Muhammad Irfan S/O Muhammad Nawaz	W/A
4. Muhammad Bilal S/O Rab Nawaz	W/A
5. Bashir S/O Muhammad Nawaz	W/A
6. Muhammad Ali S/O Rashid Ahmad	W/A
7. Najeeb Ullah S/O Hameed Ullah	J/C
8. Shah Nawaz S/O Haq Nawaz	Cleaner
9. Faheem S/O Yasin	W/A
10. Muhammad Kamran S/O Allah Nawaz	M&R Technician
11. Muhammad Anwar S/O Rab Nawaz	T/Operator
12. Muhammad Mehran S/O Muhammad Younes	M&R Technician

Findings/observations

C 1. Staff drawing salaries against the above posts versus sanctioned strength given in the following table.

	No. of Posts drawing pay in October 08	No. of Posts drawing pay in November 08	Sanctioned Posts before Oct,08	Posts Sanctioned During Oct,08	Total Posts as per Budget Book	Excess drawl	Short drawl	Remarks
nt	70	78	65	8	73	5	-	-
ar	15	16	20	1	21	-	5	-
	29	31	40	-	40	-	9	-
ne	1	4	5	-	5	-	-	-
	-	1	1	-	1	-	-	-
ts	-	1	1	-	1	-	-	-
	5	6	6	-	4	2	-	2 Posts of J/Clerk are sanctioned vide Finance Dept: No. BOVI/FD/4-64/005/MMT dated 17-08-2007 but not reflected in Budget Book 2008-09.
	-	2	-	2	2	-	-	-
	17	22	20	2	22	-	-	-

2. Employment exchange

Employment exchange was requested by then Medical Superintendent Musti Mehmood Memorial Teaching Hospital DIKhan who is signatory to the appointment orders, to send eligible candidates for appointments in Musti Mehmood Memorial Teaching Hospital DIKhan for vacancies against Class-IV.

Copy attached for ready reference.

(Annexure-E)

25

- No categories and other scales mentioned in the letter.
- No date for Interview/Selection was intimated to the Manager Employment Exchange.
- The Manager Employment Exchange provided 02 lists (09 + 14) of candidates (Hand Written) vide his office No. EE/DIK/Appt/127 dated 06-10-2008.

Copy of the letter from Manager Employment Exchange attached for ready Reference.

(Annexure-F)

- The registration numbers issued by employment exchange are in the same consecutive order.
- Also there is duplication of registration Nos. as noted from the employment Registration Cards e.g. registration No 15/W/08 dated 08/09/08 for Rukhsana Bibi wife of Muhammad Shaker and the same registration No 15/W/08 dated 13/09/08 for Rukhsana Begum Wife of Maqsood Anwar. Similarly registration No 99/0/08 dated 08/09/08 for Shah Nawaz S/O Haq Nawaz and the same registration No. 99/0/08 dated 08/09/08 for Sajid S/O Sadiq Ali. Also the registration numbers in the hand written list provided by Manager Employment Exchange do not tally with the registration numbers of the registration cards in the above mentioned cases.

So all this raises questions about the entries made in Employment Exchange. Registration Cards and the lists provided by Manager Employment Exchange. Copies of the lists along with the above noted Registration Cards for ready reference.

(Annexure-G)

### 3- Appointments Orders:-

The appointments orders are deficient regarding the following prescribed Government criteria.

- The appointments made are without formal advertisement.
- No selection committee duly approved was constituted for the purpose.
- No approval has been sought from Director General Health Services NWFP Peshawar for the selected candidates.
- All these appointees, having received their salaries from 01-11-2008 to Feb/2009, have not attended their duties (Except one Mr. Muhammad Kamran M&R Technician ),and are not on the roll call of DMS Human Resource as he was not informed formally about these appointments.
- The appointments are made on 25-10-2008 and all of these employees have submitted their arrival for duty on the same day i.e. 01-11-2008.
- The diary Nos. shown on the appointment orders do not tally with dairy/dispatch record of this office. This office dairy/dispatch register record shows no diary No for 25-10-2008.
- Most of the appointment orders are attached with recommendations from MPA's and Minister Health NWFP, even some having both. Looking at some of these recommendations, creates doubts in one's mind because it seems that a single recommended application by Minister Health has been tacitly photo copied for a number of applicants probably.

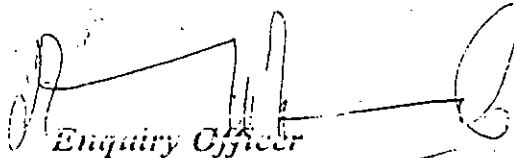
Two such applications recommended by Minister Health NWFP ready reference.

(Annexure-H)

(26)

Conclusion/Recommendation

All though, the appointments have been made without observing codal/legal formalities before making appointments/filling of these posts, all these new recruitments have drawn their salaries from the Government exchequer from 01-11-2008 onwards for four consecutive months up till February 2009. So these appointments made may be legalized through formal approval from Director General Health Services NWFP Peshawar or otherwise.



*Enquiry Officer*  
*Dr. Muhammad Arif Ullah*  
*DMS (Admin) MMM Teaching Hospital*  
*Dera Ismail Khan*

(27)

ATTESTED

After going through the record it was revealed that no proper advertisement was made in the Press for the post of BPS-5 and above and no other valid committees for constitution of Departmental Selection Committee were completed.  
The post of MS/MAM Hospital D.I. Khan is in grade-20 and is not clear whether he is appointing Authority or otherwise, clear cut rules could not be found.  
Moreover all the Class-IV employees including two M&R Tech. (BPS-09) and one Junior Clerk (BPS-07) were performing their duties, they were on roll and their Service Books were prepared and they were drawing pay, as such all the appointment orders were acted upon.  
It is also to mention that two vacant posts of Civil M&R Techs. were filled by Electrical Diploma holders.  
According to the General Clauses Act, Section-21, when an authority serves an appointment order on some one and that is acted upon by him, then it

CONCLUSION:

In this connection the undersigned proceeded to D.I. Khan on 27/07/2009 in connection with enquiry at MAM Hospital D.I. Khan and checked the record of office of MAM Hospital D.I. Khan.

FINDING:

To the on the facts regarding appointment and termination of the affected employees of MAM Hospital D.I. Khan (Complaints).

SCOPE OF THE ENQUIRY:

The undersigned have been appointed as enquiry officer by the Director General Health Services NWFP, Peshawar vide his order No. 21221-22/HE-1 dated 01/07/2009 (Page-2) on the complaint of staff of M&R Hospital MAM Hospital D.I. Khan (enquiry officer Dr. Shah Jahan Baloch).

INTERDICTIVE

ENQUIRY

GOVT OF NWFP  
OFFICE OF THE EXECUTIVE DIRECTOR OFFICER  
(HEALTH) KHAT

Deparment  
N

48

N 48

becomes his right and he cannot be terminated without initiating disciplinary proceeding.

The General Clauses Act is enumerated as follow:-

"Provision of section 21 General Clauses Act 1897 postulate that an authority which passes an order is competent to vary, rescind or cancel the order passed by that authority but such power is not absolute as the same is subject to certain limitations. Where the order sought to be varied, rescinded or cancelled is communicated to other party and subsequent to that communication that party acts upon such order, a very valuable right accrues to that party. Authority passing such order becomes functus officio to vary, rescind or cancel its earlier order as the law does not allow "Volte facie" to the authority in circumstances (2000 CLC 272)".

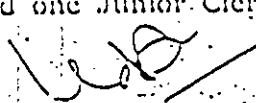
"Authority empowered to pass an order can withdraw the order only if a decisive step in pursuance of the order has not been taken. Locus Poenitentiae not available to authority if such order has been acted upon and vested rights have accrued in pursuance of that order. Orders having been implemented partly and right of appeal accruing to one party, authority has no power to withdraw such orders. Extent of availability of principle of Locus Poenitentiae to authority cited (1984 PL.C 662)".

"Power under section-21 to vary, rescind or cancel an order passed by an authority cannot be exercised in cases where order has already been communicated to other party and/or subsequent to that communication that party has acted upon it. In such case a very valuable right accrues to other party and authority passing order in such circumstances becomes incompetent to vary, rescind or cancel its previous order (NLR 1984 Civil 729-PLD 1985)".

Moreover Services & General Administration Department (Regulation Wing) Notification No. SOR-II(SS:GAD)1(10)/98, dated 13/11/2000 is very clear about such like "Illegal Recruitment". This notification bars one from terminating such employees (Copy attached).

RECOMMENDATION:

All the Class-IV employees (20 in Nos in the complaint) recruited, their services should be restored and their pay be released as no fault exists on their part. So far as the case of two M.S. Tech. and one Junior Clerk are concerned their service should not be restored.

  
Dr. Shad Ali Khattak  
Executive Distt Officer  
(Health) Kohat.  
Enquiry Officer.

Office Complex-27 Floor Dera AKDA Gate No.2 Kohat.  
Ph: & Fax: 0922-6260364

**ATTESTED**  


## OFFICE OF THE EXECUTIVE DISTRICT OFFICER

(HEALTH) KOHAT

ENQUIRYINTRODUCTION

The undersigned have been appointed as enquiry officer by the Director general health Services NWFP, Peshawar vide order No. 21721-23/E-1, dated 01/07/2009 (page-1) on the complaint of staff of Mufti Mehmood Memorial Teaching Hospital DI Khan against Dr. Shah Jahan Baloch MS MMM Hospital Di Khan.

SCOPE OF THE ENQUIRY:

To dig out the facts regarding appointment and termination of the affectee employees of MMM Hospital DI Khan (Complaints)

FINDING:

In this connection the undersigned proceeded to DI Khan on 27/07/2009 in the connection with enquiry at MMM Hospital DI Khan and checked the record of the office of MMM Hospital DI Khan.

CONCLUSION:

After going through the record it was revealed that no proper advertisement was made in the press for the post of BPS-% and above and no other codal formalities i.e constitution of Departmental Selection Committee were completed.

The post of MS MMM Hospital DI Khan is in grade -20 and is not clear whether he is appointing Authority or otherwise, clear cut Rules could not be found.

Moreover all the class-IV employees including two M&R Tech.: (BPS-9) and one junior Clerk (BPS-7) were performing their duties., they were on Roll and their Service Books were prepared and they were drawing pay as such all the appointment orders were acted upon.

It is also to mention that two vacant posts of Civil M&R Tech: were filled by Electrical Diploma Holders.

According to General Clause Act Section-21 when an authority serves an appointment order on some one and that is acted upon by hi, then it become his right and he cannot be terminated without initiating disciplinary proceeding.

The General Clause Act is enumerated as follow:-

“provision of the section -21 General clause Act 1897 postulate that an authority which passes an order is competent to var, rescind or cancel the order passed by that authority but such it not absolute as the same is subject to certain limitations, where the order sought to be varied, rescinded or cancelled is communicated to other party and subsequent to that communication that party acts upon such order, a very valuable rights accrues to that party.

Authority passing such order becomes functus officio to vary rescind or cancel its earlier order as the law does not allow Volte face to the authority in circumstances(2000 C.I.C 442)

“Authority empowered to pass an order can withdraw the order only if a decisive step in pursuance of the order has not been take. Locus poenitentiae not available to author if such order has been acted upon and vested rights have accrued in pursuance of that order. Orders having been implemented partly and right of appeal occurring to one party, authority has no power to withdraw such orders. Extent of availability of principle of Locus Poenitentiae to authority cited.(1984 PLC 663)”

“power under section-21 to vary, rescind or cancel an order passed by an authority cannot be exercised in cases where order has already been communicated to other party and/ or subsequent to that communication that party has acted upon as an such case a very valuable right accrues to other party and authority passing order in such circumstances becomes incompetent to vary, rescind or cancel is previous order(NLR 1984 Civil 729-PLD 1985)”

Moreover service & General administration Department (regulation Wing) notification No. SOR-II (S&GAD) (10)/98 dated 13/11/2000 is very clear about such like “Illegal Recruitment” this notification bares one from terminating such employees (Copy attached)

RECOMMENDATION:

All the class-IV employees (20 in Nos in the compliant) recruited their services should be restored and their pay be released as no fault exists on their part. So far as the case of the two M&R Tech: and one Junior Clerk are concerned their services should not be restored.

Dr. Shad Ali Khattak,  
Executive District officer  
(Health) Kohat.  
Enquiry officer



# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar

Muhammad Bilal (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Health Deptt: (Respondent)  
(Defendant)

I/We Muhammad Bilal

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

M. Bilal

( CLIENT )

ACCEPTED

M. Asif Yousafzai

**M. ASIF YOUSAFZAI**

Advocate

Taimur Ali Khan

**Taimur Ali Khan**  
Advocate

**M. ASIF YOUSAFZAI**

Advocate High Court,  
Peshawar.

**OFFICE:**

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

Ph.091-2211391-

0333-9103240

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWAR**

**APPEAL No. 225/2016.**

Muhammad Bilal  
V/S  
Government of Khyber Pakhtunkhuwa & others

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4.	Copy of Writ Petition	C	14-17
5.	Copy of Rejected Departmental Appeal	D	18-19
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7.	Enquiry Report of Enquiry Committee	F	22-26
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9.	Termination Orders	H	29-30
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Dated: 01-09-2016

**Respondent No. 03**

  
**Medical Superintendent**  
**MMM Teaching Hospital**  
**Dera Ismail Khan**

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWAR**

**APPEAL No. 225/2016.**

Muhammad Bilal  
V/S  
Government of Khyber Pakhtunkhuwa & others

REPLY FROM THE RESPONDENTS No. 1, 2, 3, & 5.

The Respondents No. 1, 2, 3 & 5 respectfully submit as under:-

**Preliminary objections:-**

1. That the instant Appeal is not maintainable and in competent in the eyes of law in its present form.
2. That the Appeal is barred by law.
3. That the Appellant has got no cause of action and locus standi, to file instant Appeal.
4. That the Appellant is estopped by his own conduct to file his Appeal.
5. That the Appellant has not come to this tribunal with clean hand, and suppressed all relevant facts.
6. That the Appellant has concealed the material fact from this Honorable Tribunal.
7. That the Appeal is bad on account of misjoinder and non joinder.
8. That the Honorable Service Tribunal has no jurisdiction to entertained the instant Appeal in its present form.

**OBJECTION ON FACTS:-**

1. **Incorrect;** 23 person's including the Appellant was recruited as **Ward Attendant**, purely on Contract Basis against different categories of posts (From BPS-1 to BPS-09) at Mufti Mehmood Memorial Teaching Hospital D.I.Khan, in the Year 2008, violating the "Appointment, Promotions & Transfer Rules" with the following irregularities;

- (i) Ex-cadre Recruitment.
- (ii) Recruitment over & above as per sanctioned posts.
- (iii) Non observance of codal formalities in appointments as;
  - (a) Appointments made are without formal Advertisement.
  - (b) No Departmental Selection Committee, duly approved was constituted for the purpose.
  - (c) No Merit list.
  - (d) No record of Interview/written /verbal.
  - (e) Non availability of sanctioned Posts of Ward Attendant as per budget book.
  - (f) "No Objection Certificate" for surplus pool staff was granted from the District Government.
  - (g) District Employment Exchange was not involved for Class-IV recruitments.

- (h) Appellant received his salaries and has not performed his duties and is not on the role of daily attendance register.
- (i) The Diary/Dispatched number shown on the appointment orders are not tally with Diary/Dispatched record of this office, as no Diary/Dispatched number is on record for 25.10.2008.

2. **Incorrect;** The Appellant was found absent from his duties and he was getting pay on papers only. He was recruited on contract basis and was in probation period, subject to the verification of his antecedent characters and performance.

Moreover his service record including service books, appointment orders, Medical fitness certificates etc was not available at the office of Medical Superintendent MMM Teaching Hospital D.I.Khan, which is evident from the initial facts finding report, submitted by Deputy Medical Superintendent (Adman) Mufti Mehmood Memorial Teaching Hospital D.I.Khan.

**(Copy attached as Annexure-A)**

The Pay of Appellant was stopped vide Government directives, whereby it was mentioned that; "In the first instance the Pay of absent Government employee should be stopped forthwith", from the absent staff.

**(Copy attached as Annexure-B)**

3. **Correct;** To the extent that Writ Petition No. 207/09 was filed by the Appellant at Peshawar High Court D.I.Khan Bench, which was not accepted. The Departmental Appeal was rejected. Hence according to Rules 23 of Service Tribunal Act 1974 " The Tribunal shall not entertained any Appeal in which matter has already been decided by the court".

**(Copy attached as Annexure-C)**

4. **Incorrect;** The departmental appeal was rejected twicely, first on 03-03-2010 & second on 18.1.2016, from the office of Director General Health Services N.W.F.P Peshawar.

**(Copy attached as Annexure-D)**

5. **Correct;** As per direction of Honorable Court of Service Tribunal Khyber Pakhtunkhwa Peshawar, the Appellant was re-instated by this office; vide letter No. 8326-49/11/12/Lit dated 29-11-2012, for the purpose of Departmental proceedings.

**(Copies attached as Annexure-E)**

6. **Incorrect:** As per direction of competent authority, a high level Enquiry committee, comprising of two Professors' & Deputy Medical Superintendent (Admn) was constituted, who submitted their detail report along with case to case recommendations.

The Enquiry report, along with official corresponding is attached herewith as;

**(Copy attached as Annexure-F)**

Show Cause notice, was properly published on 21-12-2012 in National Daily express & on 23-12-2012 in Daily National AAJ.

**(Copy attached as Annexure-G)**

Neither any reply was submitted by the Appellant, nor did he approach this office for personal hearing.

After fulfilling all codal formalities, his services was terminated on 2-01-2013.

**(Copy attached as Annexure-H)**

7. **Incorrect:** Departmental Appeal, against his termination was filed and the Appellant authority rejected the case for re-instatement in service, being illegal appointments, under E&D Rules 2011.

#### **REPLY OF OBJECTIONS ON GROUNDS.**

**A. Incorrect:** All the codal formalities for termination were fulfilled detail as under;

(i) As per budget book, 65 posts of Ward Attendants were available, while excess appointments were made, over and above the sanctioned strength.

The copy of budget book along with scale audit report issued from the office of District Accounts Office D.I.Khan, for the month of December 2008 is attached.)

**(Annexure-I)**

(ii) Employment Exchange was not involved for the recruitment against the posts of Class-IV.

(iii) As per decision of the Honorable Tribunal, the Appellants were re-instated, for the purpose of Departmental proceedings.

(iv) Enquiry committee was constituted under the directives of competent authority i.e. respondent No. 1,2 & 5 (Secretary Health, Director General Health Services, Chief Executive).

(v) Show cause notice was published in two leading National Daily News Papers, as per recommendation of Enquiry committee.

(vi) No reply by the Appellant was submitted in response to Show cause notice, neither reported for personal hearing.

- (vii) Termination orders were issued, after fulfilling all required codal formalities, by getting proper approval from the competent authority.
- (viii) Departmental Appeal was rejected by the competent forum.

**B. Incorrect,** hence denied. No malafidae is involved & all the norms of justice were properly fulfilled as per Government Instructions, Rules & Regulations.

**C. Incorrect** hence denied. All the codal formalities were fulfilled, keeping in view the directives of Honorable Court.

**D.** Show cause notice/charge sheet was properly published in Daily News Papers, which was not replied at all.

**E. Incorrect:** The information was properly communicated to the Appellant on his postal address.

**F. Incorrect** hence denied. The termination orders was issued after formal Enquiry, publishing of charge sheet/Show cause notice, with a detail departmental enquiry.

**G. Incorrect** hence denied. The matter was enquired & it was proved that;

- (i) Due to non performance of official duties.
- (ii) Recruitment rules were not followed.

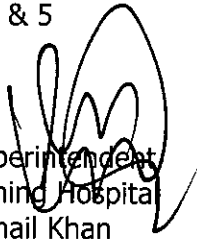
**H. Incorrect,** hence denied. Appellant was provided with the chance for personal hearing & written statements, but he failed to avail this chance. Proper reasons of termination are given in the decision of enquiry committee & departmental appeal was responded as per requirements.

**I.** All the previous Enquiries were regretted by the competent authority including Appeal.


**J.** No comments.


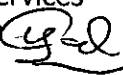
It is therefore most humbly PRAYED that the instant Appeal may graciously be dismissed, with costs.

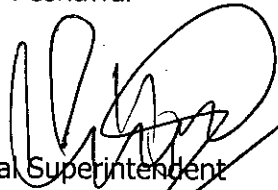
It is solemnly affirmed that the Contents of the replies are correct to the best of my knowledge and belief and are in accordance with advice from the Respondents No 1, 2 & 5

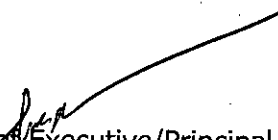
  
Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

Your Humble Respondents

  
1. Secretary Health  
Govt: of Khyber Pakhtunkhwa  
Peshawar

  
2. Director General Health Services  
Khyber Pakhtunkhwa  
Peshawar 

  
3. Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

  
5. Chief Executive/Principal  
Gomal Medical College  
Dera Ismail Khan

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWAR**

**APPEAL No. 225/2016.**

Muhammad Bilal  
V/S  
Government of Khyber Pakhtunkhuwa & others


**Affidavit**

I Dr. Tariq Masood Miankheil, Medical Superintendent Mufti Mehmood Memorial Teaching Hospital D.I.Khan is solemnly affirmed that the contents of the replies are correct and to the best of my knowledge and belief and in accordance with advice from the Respondents No.

1, 2 & 5.

Dated: 01-09-2016

**Respondent No.03**

  
**Medical Superintendent**  
**MMM Teaching Hospital**  
**Dera Ismail Khan**



Deputy Medical Superintendent  
Enquiry Officer  
MMM Teaching Hospital  
Dera Ismail Khan

No. 648 / 132  
Dated: 11/10/2009

To  
The Medical Superintendent  
MMM Teaching Hospital  
Dera Ismail Khan

Subject: ENQUIRY REGARDING RECRUITMENTS MADE AT MUFTI  
MEHMOOD MEMORIAL TEACHING HOSPITAL DIKHAN IN  
VIOLATION OF RULES OF RECRUITMENT.

TERMS OF REFERENCE:-

That the staff as per list attached appointed on 25-10-2008 are recruited in violation of the rules of recruitment.

Annexure -A

Description

The following 23 no appointments in deferent categories were made on 25-10-2009 under the signature of then Medical Superintendent Mufti Mehmood Memorial Teaching Hospital DIKhan.

- 02 appointments in BPS-09 as M&R Technician
- 01 appointment in BPS 07 as Junior Clerk.
- 01 appointment in BPS- 06 as Telephone Operator.
- 01 appointment in BPS -05 as Generator Operator.
- 05 appointments in BPS-02 as Dais.
- 01 appointment in BPS- 01 as Fireman.
- 01 appointment in BPS- 01 as Chowkidar.
- 09 appointment in BPS- 01 as Ward Attendant.
- 02 appointment in BPS- 01 as Cleaner.

Since their appointments (except one Mr. Muhammad Kamran M& R Technician) no one turned up for duties at the Hospital till the last weak of March.

All the candidates appointed for the above mentioned different categories in Mufti Mehmood Memorial Teaching Hospital DIKhan submitted their arrival report on the same day i.e. 01-11-2008.

No record pertaining to their appointments was available in this office, for which the Steno/Accountant of this office was asked in verbal and then in written twice Vide No 375/76 dated 165-03-2009 and no 427/PF dated 21-03-2009 for production of said record so as to proceed further.

Copy attached for ready reference.

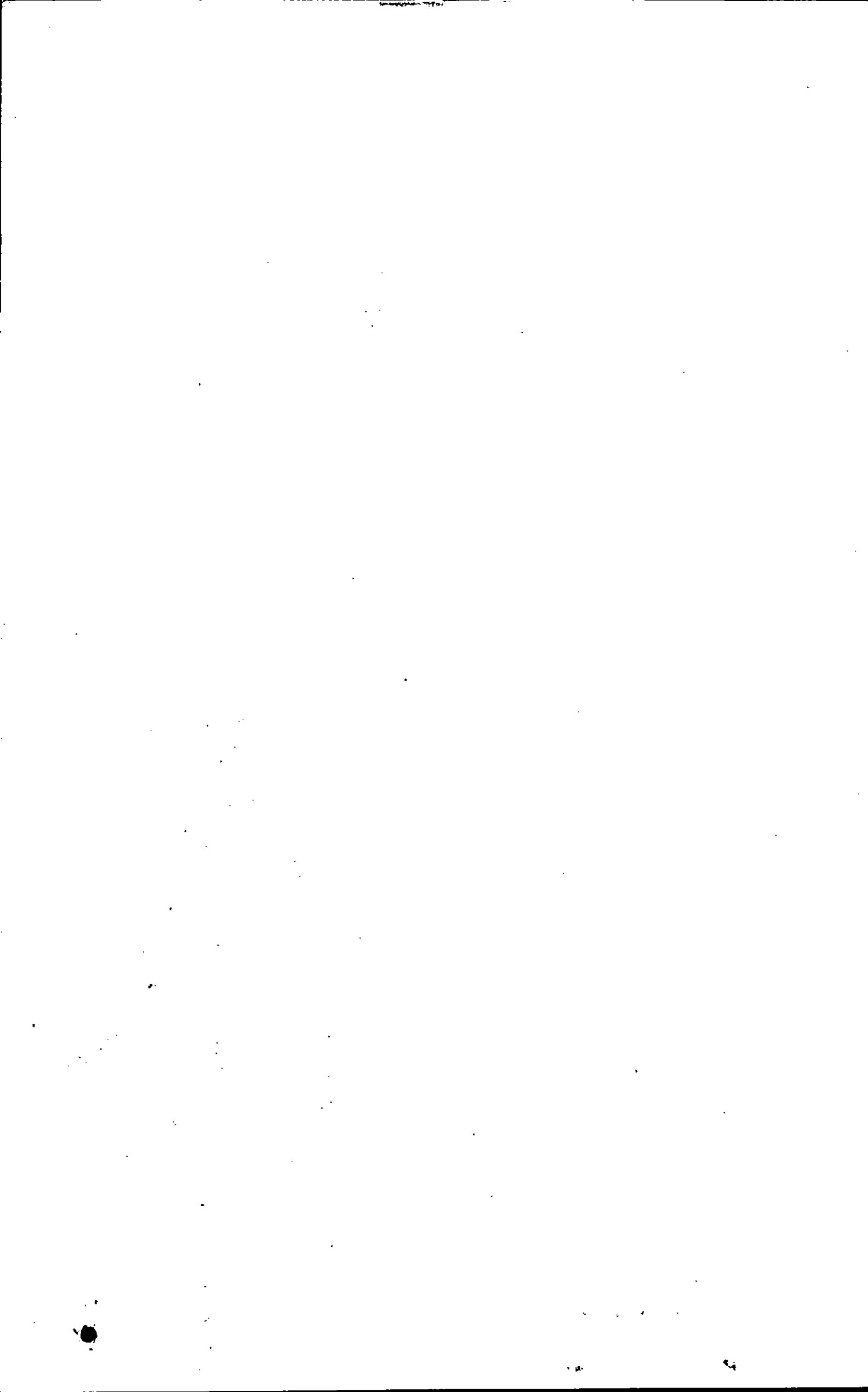
Annexure- B-C

In response, on 25-03-2009, a file containing appointment orders along with certain correspondence letters of Finance Department, Employment Exchange and Employment Exchange Registration Cards was handed over to the undersigned Vide Mr. Abdul Manan Steno grapher/Accountant letter No nil dated 24-03-2009.

Copy of letter from Abdul Manan attached for Ready Reference.

Annexure- D

(23)



✓ (8)  
The server other records pertaining to these appointments i.e. advertisement, nominations of the candidates, service books, interview list, selection committee members list, merit list not available on the record of this office.

It was also learnt that service books which were initially not available with concerned clerk, were later on handed over by Mr. Atta Ullah Computer Operator of this office to the concerned clerk.

All these employees under enquiry were asked to appear before the enquiry officer from 24<sup>th</sup> to 28<sup>th</sup> March vide this office letter No.375-76, dated 16-03-09 through DMS Human Resource of this Hospital.

(Letter already attached as Annexure- B)

05 days time given for personal appearance was due to the fact that these new requirements did not attend their duties since their appointment and even then only 12 out of 23 appeared. The rest either not available as usual or abstained from appearing before the enquiry officer for reason best known to them.

The following had personal appearance:-

- |   |                |
|---|----------------|
| 1. Muhammad Shafiq S/O Qazi Muhammad Ishfaq | Fire Man       |
| 2. Akhlaq Ahmad S/O Mushtaq Ahmad           | W/A            |
| 3. Muhammad Irfan S/O Muhammad Nawaz        | W/A            |
| 4. Muhammad Bilal S/O Rab Nawaz             | W/A            |
| 5. Bashir S/O Muhammad Nawaz                | W/A            |
| 6. Muhammad Ali S/O Rashid Ahmad            | W/A            |
| 7. Najeeb Ullah S/O Hameed Ullah            | J/C            |
| 8. Shah Nawaz S/O Haq Nawaz                 | Cleaner        |
| 9. Faheem S/O Yasin                         | W/A            |
| 10. Muhammad Kamran S/O Allah Nawaz         | M&R Technician |
| 11. Muhammad Anwar S/O Rab Nawaz            | T/Operator     |
| 12. Muhammad Mehran S/O Muhammad Younes     | M&R Technician |

(24)

Staff drawing salaries against the above posts versus sanctioned strength given in the following table.

Category	No. of Posts drawing pay in October 08	No. of Posts drawing pay in November 08	Sanctioned Posts before Oct,08	Posts Sanctioned During Oct,08	Total Posts as per Budget Book	Excess drawl	Short drawl	Remarks
ward attendant	70	78	65	8	73	5	-	
chowkidar	15	16	20	1	21	-	5	
cleaner/veeper	29	31	40	-	40	-	9	
Telephone operator	1	4	5	-	5	-	-	
Man	-	1	1	-	1	-	-	
Man operators	-	1	1	-	1	-	-	
Clerk	5	6	6	-	4	2	-	2 Posts of J/Clerk are sanctioned vide Finance Dept: No. BOVI/FD/4-64/005/MMT dated 17-08-2007 but not reflected in Budget Book 2008-09.
	-	2	-	2	2	-	-	
	17	22	20	2	22	-	-	

2. Employment exchange

Employment exchange was requested by then Medical Superintendent Mufti Mehmood Memorial Teaching Hospital DIKhan who is signatory to the appointment orders, to send eligible candidates for appointments in Mufti Mehmood Memorial Teaching Hospital DIKhan for vacancies against Class-IV.

Copy attached for ready reference

(Annexure-E)

(25)

- (10)
- No categories and other scales mentioned in the letter.
  - No date for Interview/Selection was intimated to the Manager Employment Exchange.
  - The Manager Employment Exchange provided 02 lists (09 + 14) of candidates (Hand Written) vide his office No. EE/DIK/App/127 dated 06-10-2008.

Copy of the letter from Manager Employment Exchange attached for ready Reference.

(Annexure-F)

- The registration numbers issued by employment exchange are in the same consecutive order.
- Also there is duplication of registration Nos. as noted from the employment Registration Cards e.g. registration No 15/W/08 dated 08/09/08 for Rukhsana Bibi wife of Muhammad Shaker and the same registration No 15/W/08 dated 13/09/08 for Rukhsana Begum Wife of Maqsood Anwar.
- Similarly registration No 99/0/08 dated 08/09/08 for Shah Nawaz S/O Haq Nawaz and the same registration No. 99/0/08 dated 08/09/08 for Sajid S/O Sadiq Ali.
- Also the registration numbers in the hand written list provided by Manager Employment Exchange do not tally with the registration numbers of the registration cards in the above mentioned cases.

So all this raises questions about the entries made in Employment Exchange Registration Cards and the lists provided by Manager Employment Exchange. Copies of the lists along with the above noted Registration Cards for ready reference.

(Annexure-G)

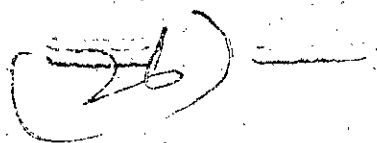
3- Appointments Orders:-

The appointments orders are deficient regarding the following prescribed Government criteria.

- The appointments made are without formal advertisement.
- No selection committee duly approved was constituted for the purpose.
- No approval has been sought from Director General Health Services NWFP Peshawar for the selected candidates.
- All these appointees, having received their salaries from 01-11-2008 to Feb/2009, have not attended their duties (Except one Mr. Muhammad Kamran M&R Technician) and are not on the roll call of DMS Human Resource as he was not informed formally about these appointments.
- The appointments are made on 25-10-2008 and all of these employees have submitted their arrival for duty on the same day i.e. 01-11-2008.
- The diary Nos. shown on the appointment orders do not tally with dairy/dispatch record of this office. This office dairy/dispatch register record shows no diary No for 25-10-2008.
- Most of the appointment orders are attached with recommendations from MPA's and Minister Health NWFP, even some having both. Looking at some of these recommendations, creates doubts in one's mind because it seems that a single recommended application by Minister Health has been tacitly photo copied for a number of applicants probably.

• two such applications recommended by Minister Health NWFP for ready reference.

(Annexure-H)

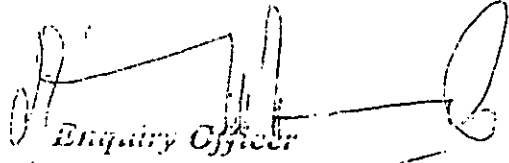




Ur

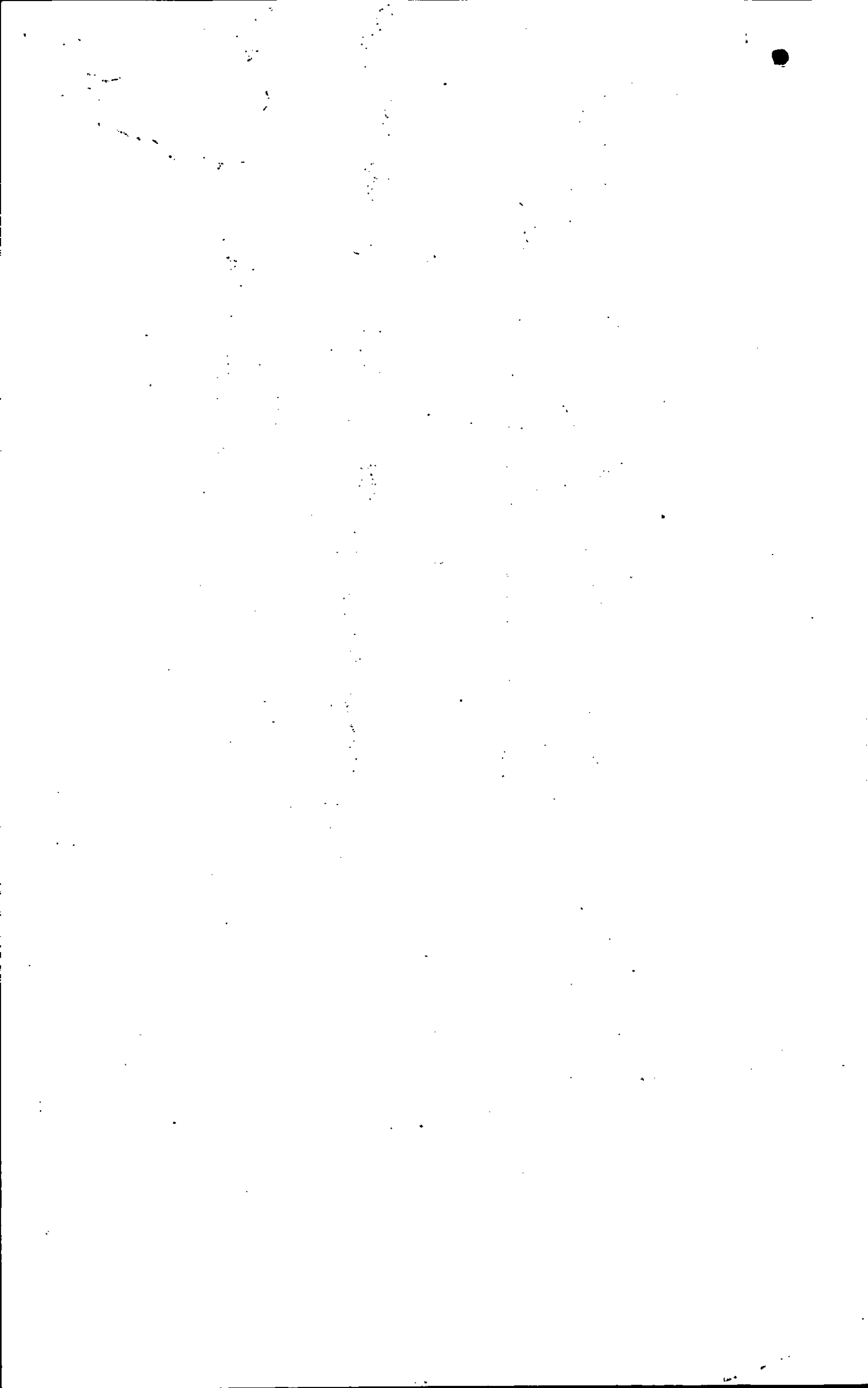
Conclusion/Recommendation

Although, the appointments have been made without observing codal/legal formalities before making appointments/filling of these posts, all these new recruitments have drawn their salaries from the Government exchequer from 01-11-2008 onwards for four consecutive months up till February 2009. So these appointments made may be legalized through formal approval from Director General Health Services NWFP Peshawar or otherwise.



*Enquiry Officer*  
**Dr. Muhammad Arif Ullah**  
**DMS (Admin) MMM Teaching Hospital**  
**Dera Ismail Khan**

(27)





S. No

From No

Name

Father

Address

DIRECTORATE GENERAL HEALTH  
SERVICES N.W.F.P., PESHAWAR

NO. 15314-413

/E-I

Dated: 22.04.2009.

To

All the sub-offices of the  
Health Directorate NWFP, Peshawar.Subject: - ABSENCE OF DOCTORS OTHER HEALTH EMPLOYEES FROM  
THEIR PLACE OF DUTY.

Memo:

It has been observed that many doctors/other health employees absent themselves from duty without getting proper leave or prior permission from their controlling

On absention from duty a Govt. servant renders himself liable to be proceeded against.

It is the duty of the immediate controlling officer to report the absence of health employees to the higher authority at the earliest. The failure to do so amounts to misconduct on the part of immediate controlling officer.

To remedy the situation it is desired that in case of absence of health employees their controlling officer should take the following steps before submitting the case to this Directorate:-

- ① In the first instance the pay of the absent Govt. employee should be stopped forthwith.
- ② The respective EDO(P)/MS of the Health facility should serve an absence notice on the absent Govt. servant at his home address through Registered letter asking him to report for duty at his place of posting within 14 days.
- ③ After the expiry of stipulated period, if no response is received, a similar exercise should be made with the same directions.

13

... 2 ...

After the expiry of the stipulated period in case of non-compliance, a detailed report along with background of the case with proper recommendations be furnished to this Directorate so that disciplinary action may be recommended to Govt: against the absent Govt: servant after completing other codal formalities in this regard.

You are directed that the above instruction must be followed in letter and spirit.

DR. FAZAL MEEMOOD  
DIRECTOR GENERAL HEALTH  
SERVICES, NWFP, PESHAWAR.

NO. /E-I.

Copy forwarded to the PS to Secretary to Govt: of NWFP Health Department, Peshawar, for information.

DR. FAZAL MEEMOOD  
DIRECTOR GENERAL HEALTH  
SERVICES, NWFP, PESHAWAR.

*Handwritten signature and scribbles*  
137509

*Handwritten initials and date*  
2/1/5

ATTESTED

2/2

1) KENNETH ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

2) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

3) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

4) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

5) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

6) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

7) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

8) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

9) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

10) ROBERT ROBERTSON, JR., SONS OF ROBERT ROBERTSON, JR. & ROBERT ROBERTSON, JR. (MARRIED) 10/10/1908

13/6/05  
 D. K. ROBERTSON  
 Pest Control  
 EXAMINOR  
 ATTESTED

107518

1082



10/10/1908

31  
 11/17/05

RESPONDENTS

- 6) THE STATE THROUGH MANAGEMENT, NABP, PESHAWAR.
- 5) DISTRICT ACCOUNTS OFFICER, DEPT. ISMAIL KHAN.
- 4) DR. SHAH BILAL BILAL, SENIOR MEDICAL OFFICER, MAJLUMI HOSPITAL, CIVIL HOSPITAL, D.I. KHAN.
- 3) DIRECTOR GENERAL (HEALTH SERVICES), N.A.F.S.P., PESHAWAR.
- 2) CHIEF OF N.A.F.S.P., SENIOR SECRETARY HEALTH DEPARTMENT, CIVIL HOSPITAL, PESHAWAR.
- 1) CHIEF OF N.A.F.S.P., SENIOR SECRETARY HEALTH DEPARTMENT, CIVIL HOSPITAL, PESHAWAR.

APPENDIX

PETITIONERS

- 27) INJURED AND MORTALLY WOUNDED SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 22) BASHIR, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 21) SHARAF, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 20) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 19) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 18) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 17) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 16) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.
- 15) MUHAMMAD SAID, SON OF MUHAMMAD NAWAZ, D.I. KHAN.

- 6)
- 5)
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FILED TODAY  
Deputy Registrar  
13/5/09

EXAMINOS  
REGISTERED  
13/5/09

13/5/09

13/5/09

15

12

19

P-X

13

13-5-09

JUDGMENT SHEET  
PESHAWAR HIGH COURT D.I.KHAN BENCH  
JUDICIAL DEPARTMENT

W/P No. 207 of 2009

JUDGMENT

Date of hearing 9.6.2009

Appellant Muhammad Kamran Saleem others by Mr. Khan / Advocate  
Respondent Govt of NWFP by Mr. Muhammad Khan / Advocate  
DAG in the Revenue Section Kundi Advocate

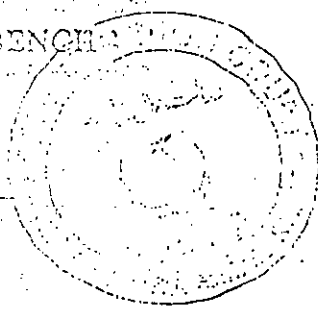
MUHAMMAD ALAM KHAN vs Muhammad

Kamran Saleem and 22 others have through this writ petition challenged the order dated 11/3/2009 whereby their salaries have been stopped.

2. The grievances of the petitioners are that they have actually performed duties in accordance with law and the attendance register available on record duly signed by the then Medical Superintendent Doctor Shah Jehan supports their claim, that NO NOC has been obtained from the DCO, that Mufti Mehmood Teaching Hospital is under the direct control of Provincial Government and not under the District Government D.I.Khan and thus, there was no need for issuance of NOC, their appointment orders are intact, medical fitness, arrival reports and service books are available and annexed with the petition.

3. Mr. Rustam Khan Kundi advocate for respondent No. 4 argued that the petitioners are civil

M. 102  
EXAMINOR  
13/6/09



249 (13)

(13) (16)

1-B-24 P-XXII  
servants and in view of the bar contained under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, their case exclusively falls within the domain of NWFP Service Tribunal and thus the instant writ petition is not maintainable.

35  
(14) (14)

3. We have scanned the record and find that since the petitioners are civil servants, in view of the bar contained under Article 212 of the Constitution and the dicta handed down in the case of Muhammad Anees and others... Vs... Afzal Sher and others (PLD 1994 SC 539), the writ petition is not maintainable. However, instead of dismissing the same, in view of the dicta handed down in the case of Muhammad Ilyas Patwari... Vs... District Officer Revenue Peshawar etc (PLD 2008 Peshawar 75), we treat it as representation on behalf of the petitioners and remit the same to Director General Health NWFP Peshawar/respondent No.2 with direction to decide the same positively by 30<sup>th</sup> June 2009 after hearing the petitioners or their learned counsel Khan

ATILS IWL Askar Afridi Advocate. In case their grievances are not redressed, they will be at liberty to move afresh the appropriate Services Tribunal in the matter.

Peshawar  
13/6/09

ANNOUNCED  
9/6/2009

M. Khan  
JUDGE  
JUDGE

13/6

(31)

(DR. FAZAL MAHMOOD)  
DIRECTOR GENERAL HEALTH  
SERVICES, NWFP, PESHAWAR

The posts will, however, not be filled till the appeal period is completed. The above ex-officials may please be informed accordingly.

- 23) \* Muhammad Arway, Telephone Operator
- 22) \* Sajid Khan, Generator Operator
- 21) Muhammad Sajid, Cleaner
- 20) Sajida Bibi, Dai
- 19) Yousaf Hayat, Ward Attendant
- 18) Muhammad Fahim, Ward Attendant
- 17) Fanda Bibi, Dai
- 16) Muhammad Ali, Ward Attendant
- 15) Rukhsana Begum, Dai
- 14) Rukhsana Bibi, Dai
- 13) \* Muhammad Mehtar, MKR/Teach
- 12) \* Abdur Rasheed, Chowkidar
- 11) Bashir, Ward Attendant
- 10) Shah Nawaz, Cleaner
- 9) Muhammad Arway, Ward Attendant
- 8) Muhammad Iftan, Ward Attendant
- 7) Ikhtla Ahmad, Ward Attendant
- 6) Muhammad Imran, Ward Attendant
- 5) Muhammad Bilal, Ward Attendant
- 4) Tasieem Bibi, Dai
- 3) Najeeb Ullah, J. Clerk
- 2) Muhammad Shafiq, Fire Man
- 1) Muhammad Kamran Saleem, MKR (Tech/BPS-9)

Reference your letter No. 34857 dated 20.1.2010 on the subject noted above. The appeals for the reinstatement into Govt Service in respect of the following ex-employees working under your control are hereby rejected:-

SUBJECT: SERVICE APPEAL NO. 1197/2009 ETC.

The Medical Superintendent  
M.A.B.I Teaching Hospital, D.I Khan.

NO 7508  
PERSONNEL  
DIRECTORATE GENERAL HEALTH  
SERVICES, NWFP, PESHAWAR

Date: 31/12/2010

(12)



**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUN KHWA PESHAWAR**

E-Mail Address: [mydir@ghs.gov.pk](mailto:mydir@ghs.gov.pk) office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230

**OFFICE ORDER**

178  
25/01/16

1. WHEREAS Disciplinary proceeding under E & D Rules 2011, initiated against Mr. Yousaf Hayat Ex: Ward Attendant attached to MMM Teaching Hospital D.I Khan, on account of his irregular appointment by the M.S MMM Teaching Hospital D.I Khan.
2. WHEREAS, an Enquiry was conducted against him through Enquiry Committee.
3. WHEREASE, after publication of the show cause notice in the Daily News Paper their services were terminated by the M.S MMM Teaching Hospital D.I Khan.
4. WHEREAS, he lodged appeal against his termination order to the appellate authority viz: DGHS Khyber Pakhtunkhwa, but the same having no force was rejected vide DGHS letter No. 1508/Personnel dated 13.03.2010.
5. WHEREAS, he went into appeal before the Peshawar High Court Peshawar D.I Khan Bench.
6. WHEREAS, in pursuance of the Judgment of the above court passed in appeal No. 997/2013 dated 16.10.2015, he was given opportunity of defending himself and personal hearing.
7. AND WHEASEAS, he failed to justify his illegal appointment issued in the contravention of Appointment Promotion Transfer Rules 1989.
8. Therefore I in my capacity as Appellate authority hereby reject the case for re-instatement in service.

Sd/xxxxxxxxx  
DIRECTOR GENERAL HEALTH SERVICES, K.P.K, PESHAWAR.  
Dated 18 /01/2016.


No 298-302 Personnel.

Copy forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. M.S MMM Teaching Hospital D.I Khan.
3. AD (Lit) DGHS, Khyber Pakhtunkhwa Peshawar w/r to his letter No. 4331-32/AD(Lit) dated 30.10.2015.
4. DAO D.I Khan.
5. Official concerned.

For information and necessary action.

To: You of Hayat

  
DIRECTOR GENERAL HEALTH SERVICES, K.P.K, PESHAWAR.  
27/11/2016

Hafiz S.M Ali Shah







0966-747067  
0966-747151-53  
0966-747154

Office of the  
Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan

29

**OFFICE ORDER**

Reference Honorable Court of Service Tribunal Khyber Pakhtunkhwa Peshawar vi their judgment in service Appeal No. 861/2010 & other announced on 05-04-2012.

The following Appellants are re-instated for the purpose of departmental proceeding without any orders with regard to back benefits with immediate effect.

S.No	Name	Father's Name	Designation
1	Mr. Kamran Saleem	Allah Nawaz Saleem	M&R Technician (Electrical) (BPS-09)
2	Mr. Mohammad Mehran	Muhammad Younas	M&R Technician (Electrical) (BPS-09)
3	Mr. Najeeb Ullah	Hameed Ullah	Junior Clerk (BPS-07)
4	Mr. Shah Nawaz	Haq Nawaz	Cleaner (BPS-01)
5	Mr. Bashir	Muhammad Nawaz	Ward Attendant (BPS-02)
6	Mr. Mohammad Imran	Malik Siraj-u-Din	Ward Attendant (BPS-02)
7	Mr. Yousef Hayat	Abdul Aziz	Ward Attendant (BPS-02)
8	Miss Rukhsana Bibi	W/O Muhammad Shakir	Dai (BPS-02)
9	Mr. Mohammad Faheem	Ghulam Yasin	Ward Attendant (BPS-02)
10	Mr. Mohammad Bilal	Rabnawaz	Ward Attendant (BPS-02)
11	Mr. Mohammad Sajid	Muhammad Sadiq	Cleaner (BPS-01)
12	Mr. Mohammad Shafiq	Qazi Muhammad Ishaq	Fire Man (BPS-01)

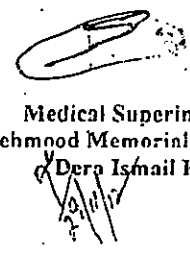


(21)

No	Name	Father's Name	Designation
13	Miss Rukhsana Begum	W/O Maqsood Anwar	Dai (BPS- 02)
14	Miss. Farida Bibi	Dilawar Khan	Dai (BPS- 02)
15	Miss Sajida Bibi	Faiz Ullah	Dai (BPS- 02)
16	Miss Tasleem Bibi	W/O Muhammad Saleem	Dai (BPS- 02)
17	Mr. Mohammad Irfan	Muhammad Nawaz	Ward Attendant (BPS- 02)
18	Mr. Mohammad Ali	Rasheed Ali	Ward Attendant (BPS- 02)
19	Abdur Rashid	Ameer Muhammad	Chowkidar (BPS-01)
20	Muhammad Anwar Khan	Rab Nawaz Khan	Telephone Operator (BPS-07)

6/11

Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan



No. 8326-49/11/2012 /Litt: Dated DIKhan the 29/11/2012

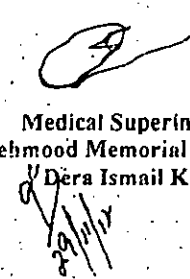
**Copy forwarded to the:**

1. Director General Health Services Khyber Pakhtunkhwa Peshawar, with reference to their letter No: 5614/P dated 30-08-2012.
2. Chief Executive/Principal Gomal Medical College DIKhan, with reference to their letter No 4233-35/Esstt/PF dated 28-11-2012.
3. PS to Secretary Health Government of Khyber Pakhtunkhwa Peshawar.
4. District Accounts Officer DIKhan.
5. Accountant MMM Teaching Hospital DIKhan.
6. All concerned.

(For information and necessary action please)

6/11

Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan





28

**OFFICE OF THE CHIEF EXECUTIVE/PRINCIPAL GOMAL MEDICAL COLLEGE  
DERA ISMAIL KHAN**

**Reference No. 4650/Personnel Dated 11-07-2012**

**File No. 2413/2012**

To,

The Director General,  
Health Services, Khyber Pakhtunkhwa,  
Peshawar

Subject:

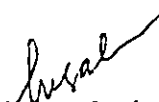
**Enquiry Report/Recommendations in Service Appeal No. 861-8679/2010  
titled as Mr. Kamran Saleem V/S Government of Khyber Pakhtunkhwa  
Health Department, Peshawar & Others.**

Sir,

Please reference to your office order No. 4650/Personnel Dated 11-07-2012, the detail enquiry report along with its recommendation is herewith submitted for your information and onward submission to the quarter concern.

Submitted for information and further necessary action please.

Enclosures = (65 pages)

  
Chief Executive/Principal  
DHQ/MMM Teaching Hospital/  
Principal Gomal Medical College  
Dera Ismail Khan

(23)

Brief History, Observations & Recommendations of the  
Service Appeal No. 864-879/2010 titled as Mr. Kamran Saleem  
V/S Government of Khyber Pakhtunkhwa,  
Health Department, Peshawar & Others.

1. 23 candidates were recruited on Contract Basis against different posts (BPS- 01 to 09) at Mufti Mehmood Memorial Teaching Hospital DIKhan, violating the rules, and without observing codal formalities in year 2008, against vacant posts with the following irregularities; Copy of appointment orders attached as;

- (i) Recruitment of 05 number Dai's was made against the fake certificates. **Annexure-I**  
Verification letter, from DGHS Peshawar attached as; **Annexure-II**
- (ii) No sanctioned post of M&R (Electrical) existed at the time of recruitment. (Ex-Cadre recruitment). Copy of SNE attached as; **Annexure-III**
- (iii) Over and above recruitments against sanctioned posts of Ward Attendants (Total Sanctioned Posts 73, Total Recruited 80).  
Copy of the budget book and scale audit register is attached as; **Annexure-IV-V**
- (iv) No advertisement/no selection committee/no interview/written/skill tests.
- (v) No formal approval from the competent authority.
- (vi) No NOC from District Government.

2. (i) The officials were recruited purely on Contract Basis with the condition that their services will be liable to termination any time without giving any notice or assigning any reason.

- (ii) They were on probation period.
- (iii) All the staff (except one) did not attend their duties and were absent.
- (iv) No record pertaining to their appointments was available in MS office.
- (v) Only 12 out of 23 appeared in person before the enquiry officer.

3. The Detail of the concerned recruited officials is as under:

S.No	Name	Recruited as	Remarks
1	Mr. Kamran Saleem	M&R Technician (Electrical) BPS-09	No Sanctioned Post available.
2	Mr. Mohammad Mehran		
3	Mr. Najeeb Ullah	Junior Clerk BPS-07	No codal formalities for recruitment observed.
4	Muhammad Anwar Khan	Telephone Operator BPS-06	* No codal formalities for recruitment observed.
5	Miss Rukhsana Begum	Dai BPS- 02	* <b>Had no Appeal in Service Tribunal.</b>
6	Miss. Farida Bibi		* No codal formalities for recruitment observed.
7	Miss Sajida Bibi		* Recruited against fake certificates.
8	Miss Tasleem Bibi		
9	Miss Rukhsana Bibi		

S.No	Name	Recruited as	Remarks
10	Mr. Ikhtlaq Ahamid	Ward Attendant BPS- 01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
11	Mr. Bashir		
12	Mr. Mohammad Imran		
13	Mr. Yousef Hayat		
14	Mr. Mohammad Faheem		
15	Mr. Mohammad Bilal		
16	Mr. Mohammad Irfan		
17	Mr. Mohammad Ali		
18	Mohammad Anwar		
19	Mr. Mohammad Shafiq	Fire Man BPS-01	*No codal formalities for recruitment observed.
20	Sajid Khan	Generator Operator BPS-01	* No vacant post available. *No codal formalities for recruitment observed.
21	Abdur Rashid	Chowkidar BPS-01	* No vacant post available. * <b>Had no Appeal in Service Tribunal.</b> *No codal formalities for recruitment observed.
22	Mr. Mohammad Sajid	Sweeper/Cleaner BPS-01	* No vacant post available. * <b>Had no Appeal in Service Tribunal.</b> *No codal formalities for recruitment observed.
23	Mr. Shah Nawaz		

4. The irregularity was observed by the Audit Party which was properly communicated to the DGHS Khyber Pakhtunkhwa Peshawar.
5. Preliminary enquiry was conducted. Copy attached as; **Annexure-VI**
6. The termination orders were issued by the office of MS MMMTH DIKhan under the directives of DGHS Khyber Pakhtunkhwa Peshawar. Copies attached as; **Annexure-VII-VIII-IX**
7. Departmental Appeal was rejected by DGHS Khyber Pakhtunkhwa Peshawar. Copy attached as; **Annexure-X**
8. The 20 terminated officials filed an Appeal at Honorable Court of Service Tribunal Khyber Pakhtunkhwa against Health Department. Copies attached as; **Annexure-XI**
9. Joint Parawise comments, favoring the Government Plea, properly vetted by Public Prosecutor Service Tribunal Khyber Pakhtunkhwa were submitted in each and every case.
10. The Honorable Court of Service Tribunal Peshawar Partially accepted the Appeal and set aside the orders of competent authority dated 08-06-2009 & 31-03-2010. The Honorable Court Ruled that "The Appellants are re-instated for the purpose of proper Departmental proceedings, without any order with regard to back benefits, with direction the Respondent-Department to proceed afresh in the case in accordance with Law and also provide opportunity of showing cause/hearing before passing any order detrimental to the interest of the Appellants". Copies attached as; **Annexure-XII**
11. The existing vacant position of the relevant posts is attached as; **Annexure-XIII**

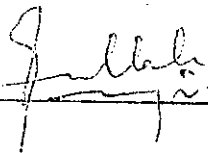
## Recommendations.

25

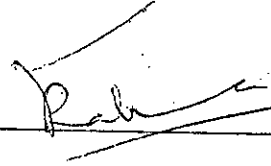
1. S.No 01 & 02:
  - (a) No codal formalities observed during recruitment for these posts.
  - (b) The sanction posts were of M&R Technician (Civil) , while the recruited candidates hold Electrical Diploma which is not eligible for these posts.
  - (c) Proper Departmental proceeding should be initiated against them for removal from service according to Rules.
  - (d) The posts must be filled as per service Rules.
2. S.No 03:
  - (a) No codal formalities observed during recruitment for this post.
  - (b) Proper Departmental proceeding should be initiated against him for removal from service according to Rules.
  - (c) The posts must be filled as per service Rules.
3. S.No 04:
  - (a) No codal formalities observed during recruitment for this post.
  - (b) He did not Appealed to the Court of Honorable Service Tribunal, so his termination order must be considered as valid.
  - (c) The posts must be filled as per service Rules.
4. S.No 05 to 09:
  - (a) No codal formalities observed during recruitment for these posts.
  - (b) All the Dai's were recruited on the basis of fake certificates.
  - (c) Proper Departmental proceeding should be initiated against them for removal from service according to Rules.
  - (d) The posts must be filled as per service Rules.
5. S.No 10 to 19:
  - (a) No codal formalities observed during recruitment for these posts.
  - (b) Proper Departmental proceeding should be initiated against them for removal from service according to Rules.
  - (c) The posts must be filled as per service Rules.
6. S.No 20 & 21:
  - (a) No codal formalities observed during recruitment for these posts.
  - (b) Posts not available.
  - (c) They did not Appealed to the Court of Honorable Service Tribunal, so their termination order must be considered as valid.
7. S.No 22 & 23:
  - (a) No codal formalities observed during recruitment for these posts.
  - (b) Proper Departmental proceeding should be initiated against them for removal from service according to Rules.
  - (c) The posts must be filled as per service Rules.



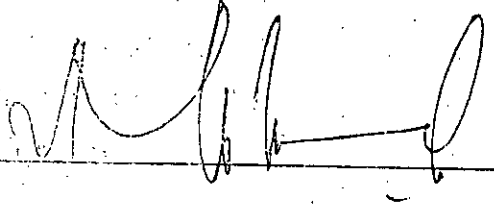
1. Professor Dr. Fida Ullah  
Head Department of Anatomy  
Gomal Medical College DIKhan

  
\_\_\_\_\_

2. Professor Dr. Fazal-ur-Rehman  
Head Department of Pediatrics  
Gomal Medical College DIKhan

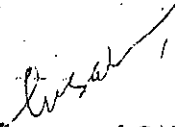
  
\_\_\_\_\_

3. Dr. Muhammad Arif Ullah  
Deputy Medical Superintendent. (Admn)  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan

  
\_\_\_\_\_

Dated: 02-08-2012

Countersigned by

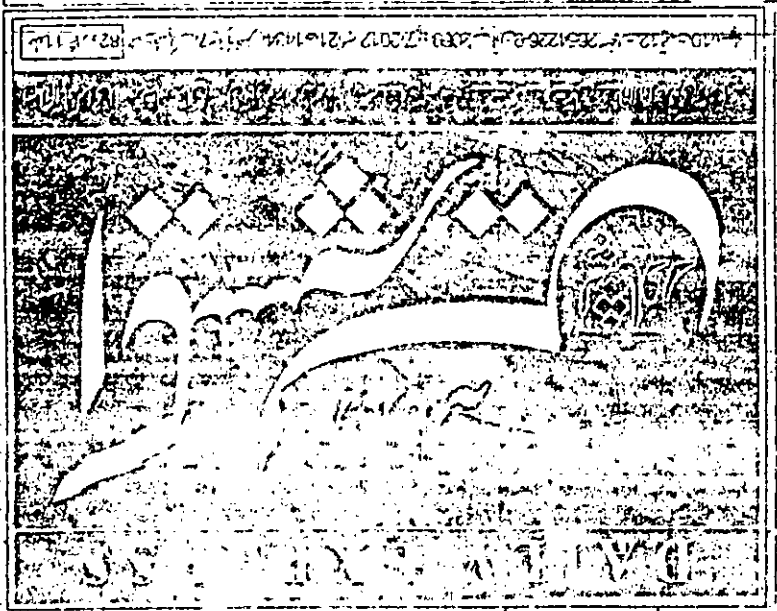
  
Professor Dr. Muhammad Saleem Khan  
Chief Executive/Principal  
Gomal Medical College  
Dera Ismail Khan

1	MAR Tech Electrician	09	09	09
2	MAR Tech Electrician	09	09	09
3	Junior Clerk	03	03	03
4	Dai	04	04	04
5	Dai	05	05	05
6	Dai	06	06	06
7	Dai	07	07	07
8	Dai	08	08	08
9	Ward Attendant	09	09	09
10	Ward Attendant	10	10	10
11	Ward Attendant	11	11	11
12	Ward Attendant	12	12	12
13	Ward Attendant	13	13	13
14	Ward Attendant	14	14	14
15	Ward Attendant	15	15	15
16	Ward Attendant	16	16	16
17	Ward Attendant	17	17	17
18	Fireman	18	18	18
19	Sweeper	19	19	19
20	Sweeper	20	20	20

2012 23 4

27

FRIDAY, DECEMBER 21, 2012



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1	MR	Technician	MR
2	MR	Technician	MR
3	MR	Junior Clerk	MR
4	MR	MR	MR
5	MR	MR	MR
6	MR	MR	MR
7	MR	MR	MR
8	MR	MR	MR
9	MR	Ward	MR
10	MR	MR	MR
11	MR	MR	MR
12	MR	MR	MR
13	MR	MR	MR
14	MR	MR	MR
15	MR	MR	MR
16	MR	MR	MR
17	MR	MR	MR
18	MR	MR	MR
19	MR	MR	MR
20	MR	MR	MR

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288



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0966-747154

Office of the  
Medical Superintendent  
Mufti Mehmood Memorial Teaching Hospital  
Dera Ismail Khan


29

**Office Order:-**

On the recommendation of Enquiry Officer's, the following staff of Mufti Mehmood Memorial Teaching Hospital DIKhan are herewith terminated with immediate effect, after fulfilling all the codal formalities, including Departmental Enquiry, Show Cause Notice published in Daily Newspaper's, detail as under;

S.No.	Name	Designation	BPS	Reason for Termination
1	Mr. Kamran Saleem	M&R Technician (Electrical)	BPS-09	No Sanctioned Post available.
2	Mr. Mohammad Mehran	M&R Technician (Electrical)	BPS-09	No Sanctioned Post available.
3	Mr. Najeeb Ullah	Junior Clerk	BPS-07	No codal formalities for recruitment observed.
4	Miss Rukhsana Begum	Dai	BPS-02	* No codal formalities for recruitment observed. * Recruited against fake certificates.
5	Miss. Farida Bibi	Dai	BPS-02	* No codal formalities for recruitment observed. * Recruited against fake certificates.
6	Miss Sajida Bibi	Dai	BPS-02	* No codal formalities for recruitment observed. * Recruited against fake certificates.
7	Miss Yasleem Bibi	Dai	BPS-02	* No codal formalities for recruitment observed. * Recruited against fake certificates.
8	Miss Rukhsana Bibi	Dai	BPS-02	* No codal formalities for recruitment observed. * Recruited against fake certificates.
9	Mr. Ikhtlaq Ahmad	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
10	Mr. Bashir	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
11	Mr. Mohammad Imran	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.

	Name	Designation	BPS	Reason for Termination
2	Mr. Yousef Hayat	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
13	Mr. Mohammad Faheem	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
14	Mr. Mohammad Bilal	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
15	Mr. Mohammad Irfan	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
16	Mr. Mohammad Ali	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
17	Mohammad Anwar	Ward Attendant	BPS-01	* Over & Above Recruitment against sanctioned strength. * No codal formalities for recruitment observed.
18	Mr. Mohammad Shafiq	Fire Man	BPS-01	* No codal formalities for recruitment observed. * No vacant post available.
19	Mr. Mohammad Sajid	Sweeper/Cleaner	BPS-01	* No codal formalities for recruitment observed.
20	Mr. Shah Nawaz	Sweeper/Cleaner	BPS-01	* No codal formalities for recruitment observed.

  
 Medical Superintendent  
 Mufti Mehmood Memorial Teaching Hospital  
 Dera Ismail Khan

No. 235-62/01/2013 /Estt:


Dated: \_\_\_\_\_ DIKhan the

12/01/13  
12/01/2013

**Copy forwarded to the:**

1. Secretary Department of Health, Government of Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Chief Executive/Principal Gomal Medical College DIKhan.
4. District Accounts Officer, DIKhan.
5. Deputy Medical Superintendent H/R MMM Teaching Hospital DIKhan.
6. Accountant MMM Teaching Hospital DIKhan.
7. All concerned for information.

(For information and necessary action please)

  
 Medical Superintendent  
 Mufti Mehmood Memorial Teaching Hospital  
 Dera Ismail Khan

Sl. No.	Job Title	Total ACT	Permanent ACT	Temporary ACT	Other ACT	Difference	Pay Sec	Grade
1	347	0	0	0	0	0		
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3	410	0	0	0	0	0		
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97	410	0	0	0	0	0		
98	410	0	0	0	0	0		
99	410	0	0	0	0	0		
100	410	0	0	0	0	0		

Total post of Ward Attendant = 73  
 Draw pay in 11/12/2008 = 80  
 Post Extra = 07 surplus

Draw 80  
 Post 73  
 Surplus = 07

32

NC21017 (013)  
HEALTH

073101 GENERAL HOSPITAL SERVICES					
FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME			NUMBER OF POSTS 2008-2009	BUDGET ESTIMATES 2008-2009	RELEASES 2008-2009
			Rs	Rs	Rs
07	HEALTH				
073	HOSPITAL SERVICES				
0731	GENERAL HOSPITAL SERVICES				
073101	GENERAL HOSPITAL SERVICES				
D14131 Multi-Mohamud Teaching Hospital D.L.Khan					
G913	Generator Operator	(BPS-05)	1	30,000	30,000
H065	House Keeper	(BPS-05)	1	35,000	35,000
R014	Receptionist	(BPS-05)	2	40,000	40,000
D112	Driver	(BPS-04)	4	120,000	120,000
T049	Tubewell Operator	(BPS-03)	2	60,000	60,000
D007	Dai	(BPS-02)	20	440,000	440,000
W004	Ward Orderli	(BPS-02)	5	80,000	80,000
A01156	Total Pay of Contract Staff		148	6,078,000	6,078,000
C057	Choykidar	(BPS-01)	20	960,000	960,000
D060	Dhobi	(BPS-01)	10	478,000	478,000
F022	Fireman	(BPS-01)	1	48,000	48,000
M010	Mali	(BPS-01)	10	472,000	472,000
N005	Naib Qasid	(BPS-01)	1	48,000	48,000
P047	Plumber	(BPS-01)	1	48,000	48,000
S152	Sweeper	(BPS-01)	40	2,104,000	2,104,000
W039	Ward Attendant	(BPS-01)	65	1,920,000	1,920,000
A012	TOTAL ALLOWANCES			9,002,000	9,002,000
A012-1	TOTAL REGULAR ALLOWANCES			8,872,000	8,872,000
A01201	Senior Post Allowance			13,000	13,000
A01202	House Rent Allowance			1,600,000	1,600,000
A01205	Dearness Allowance			3,900,000	3,900,000
A01207	Washing Allowance			3,000	3,000
A01208	Dress Allowance			200,000	200,000
A01209	Special Additional Allowance			781,000	781,000
A01217	Medical Allowance			495,000	495,000
A01224	Entertainment Allowance			10,000	10,000
A01226	Computer Allowance			20,000	20,000
A01236	Deputation Allowance			200,000	200,000
A01244	Adhoc relief			340,000	340,000

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

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NO. BOVI/FD/4-64/2007-08/Vol. II  
Dated Peshawar the 23<sup>rd</sup> Sept: 2008.

To,  
The Secretary to Govt. of NWFP,  
Health Department, Peshawar.

Subject: SNE FOR CREATION OF POSTS IN MUFTI MEHMOOD TEACHING HOSPITAL, DIKHAN.

Dear Sir,

I am directed to refer to Health Department's U.O. letter No. SOB/HD/1-1/2006-07/DIKhan, dated 19<sup>th</sup> September-2008, addressed to this Department and copy thereof endorsed to Medical Superintendent, Mufti Mehmoood Teaching Hospital, DIKhan on the subject noted above and to convey the concurrence of this Department for creation of the following Twelve (12) numbers of additional posts in Mufti Mehmoood Teaching Hospital, DIKhan with immediate effect subject to observance of all codal / legal formalities before making appointment/filling of these posts :-

S.No.	Name of post & BPS	No. of posts.
1	Civil M&R Technician (BPS-9).	2
2	Dai (BPS-2).	2
3	Ward Attendant (BPS-1).	8
	Total	12

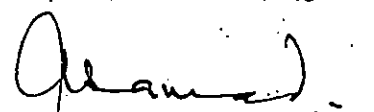
2- The expenditure involved is debitabie to the function cum object classification 07-Health-073-Hospital Services-0731-General Hospital Services-073101-General Hospital Services-DI4131-Mufti Mehmoood Teaching Hospital, DIKhan and will be met out from the sanction budget grant of the CFY 2008-09.

Yours faithfully,

(ABDUS SAMAD)  
BUDGET OFFICER-VI

C.C.

1. District Accounts Officer, DIKhan.
2. Medical Superintendent, Mufti Mehmoood Teaching Hospital, DIKhan w/r to letter referred to above.

  
BUDGET OFFICER-VI

(17)





وکالت

MALIK MUHAMMAD FAISAL

Advocate  
No. 09 0800  
Date of issue: May 2016  
Valid upto: May 2019



کورٹ  
فیس

خواہش ہے کہ اس کی توثیق ہو  
محمد نسیم صاحب زید  
سہیل احمد صاحب  
سہیل احمد صاحب

بعد ازاں  
دعویٰ یا جرم  
تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے منظور ہوئی درخواست کے تحت پیش کی گئی یا مقدمہ مقدمہ نام

محمد نسیم صاحب

کو حسب ذیل شرائط پر وکیل مقرر کیا گیا ہے کہ میں پیشی پر خود یا اپنا بذریعہ دو برکھدات حاضر ہوتا ہوں گا اور ہر وقت پکارتے جانے مقدمہ وکیل صاحب  
موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مندرجہ حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب  
موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ نیا کچہری کے اوقات سے پہلے یا بیچے یا بروز تعطیل  
بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر کچہری کے علاوہ اور جگہ سمیت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے یا بیچے پیش ہونے  
پر مندرجہ کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا نکت نہ دہلی کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے نہ  
کو کئی ساختہ پر وکیل صاحب موصوف پیش کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسانے ڈگری  
نظر ثانی اپیل گمانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر پاشی یا راضی نامہ و فیصلہ برطرف کرنے اقبال دعویٰ کا بھی آغا ہوگا اور بصورت مقرر ہونے  
تاریخ پیشی مقدمہ مزکورہ بیرون از کچہری صدر بیرونی مقدمہ مزکورہ نظر ثانی اپیل و گمانی و برآمدگی مقدمہ یا سنوٹی ڈگری ایک طرف سے درخواست علم اتناہی یا فرقی  
یا گرفتاری قبل از فیصلہ اجراء ڈگری بھی صاحب موصوف کو بشرط ادا ہونے علیحدہ علیحدہ منظور کی جائے گا اور تمام ساختہ پر صاحب موصوف پیش کرے  
از خود منظور و قبول ہوگا اور بصورت ضرورت صاحب موصوف کو اپنے بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی صورت درخواست نظر ثانی  
اپیل گمانی یا دیگر معاملہ و مقدمہ مذکورہ کسی دوسرے وکیل یا تیر سز کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے شیر قانون کو کہ ہر اس میں وہی اور دینے  
اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التواء پڑے گا وہ صاحب موصوف کا حق ہوگا نہ کہ  
صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پروسی کریں اور ایسی صورت  
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے

2017 مارچ 28 مورخہ

مضمون وکالت نامہ کن لیا ہے اور اچھی طرح سمجھ لیا ہے اور مستحضر ہے

Accepted  
[Signature]

M. Bilal  
[Signature]

Accepted  
[Signature]

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 225 /2016

*Muhammad Bilal*

VS

Health Deptt:

.....  
**REJOINDER ON BEHALF OF APPELLANT**  
.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-8) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. Incorrect. While para 1 of the appeal is correct.
2. Incorrect. The appellant has regularly performed his duty. Moreover he was appointed by the competent authority.
3. Admitted correct. Hence no comments.
4. Incorrect. The departmental appeal was not rejected by the department upto 30.6.2009 as directed by the Hon'able High Court and therefore the appellant filed service appeal and during the pendency of the service appeal the department passed the termination order on 8.6.2009, therefore the service appeal of the appellant became in-fructuous and, however the august Service tribunal was pleased to direct the respondent No.2 on 31.12.2009 for deciding the pending departmental appeal of the against the termination order within one month.
5. No comments.
6. Incorrect. While para 6 of the appeal is correct.
7. Incorrect. While para 7 of the appeal is correct.
8. Not replied by the respondents which means that para 8 of the appeal is correct.

**GROUND:**

- A. Incorrect. While para A of the appeal is correct.

B. Incorrect. No proper opportunity of defence was provided to the appellant which is violation Audi Alteram Partem and Superior Courts judgments.

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

D. Incorrect. No show cause/ charge sheet and statement of allegations were served to the appellant before passing the termination order which must and mandatory according to law and rules.

E. Not replied according to para E of the appeal. Moreover para E of the appeal is correct.

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

G. Incorrect. The august Service Tribunal Directed to the respondent to inquire into the matter in a proper way by providing full chance of defence to the appellant, but no opportunity of defence was provided to the appellant during the inquiry proceeding which is the utter violation of service Tribunal direction as well as inquiry proceeding.

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

I. Incorrect. The previous two inquiries were concluded in the favour of the appellant, but respondent department did not consider the conclusion of the previous inquiry reports and terminated the appellant in slip shod manner which is against the norm of justice and fair play.

J. No comments, endorsed by the department that para J of the appeal is correct.

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

APPELLANT

Through:

M.ASIF YOUSAFZAI  
&  
(TAIMUR ALI KAHN)  
ADVOCATE SUPREME COURT  
ADVOCATE HIGH COURT

AFFIDAVIT

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

DEPONENT

- 1 AUG 2017

Oath Commissioner  
Zafar Khan Advocate  
Distt: Court Peshawar

ATTESTED

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 225 /2016

*Muhammad Bilal* VS

Health Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

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8. Not replied by the respondents which means that para 8 of the appeal is correct.

GROUND:

- A. Incorrect. While para A of the appeal is correct.

B. Incorrect. No proper opportunity of defence was provided to the appellant which is violation Audi Alteram Partem and Superior Courts judgments.

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

D. Incorrect. No show cause/charge sheet and statement of allegations were served to the appellant before passing the termination order which must and mandatory according to law and rules.

E. Not replied according to para E of the appeal. Moreover para E of the appeal is correct.

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

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ADVOCATE HIGH COURT

AFFIDAVIT

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DEPONENT

1 AUG 2017

~~Oath Commissioner  
Zahoor Khan Advocate  
Distt. Court Peshawar~~

~~ATTESTED~~