

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, AT CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 610/2018

Dr. Muhammad Irshad..... **Appellant**

Versus

Government of Khyber Pakhtunkhwa & others **Respondents.**

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Versus

Govt. of Khyber Pakhtunkhwa and others.....**Respondents**

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the Appellant has got neither cause of action nor locus standi to file the instant appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the Appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.

ON FACTS:

1. Para No. 1 is correct, being matter of record.
2. Para No. 2 is incorrect. During 2010 to 2014, the Appellant did not perform duty as there is no record of attendance & monthly reports.

3. Para No. 3 Director General Health Services Khyber Pakhtunkhwa asks for his performance during the said period via this Directorate letter No. 9306-16/Personnel dated 08/09/2015 (Annex-A). In response via Medical Superintendent DHQ Hospital Battagram letter No. 3039-41/Homeo/Tibb dated 17/09/2015 (Annex-B), it has been communicated that the Appellant never performed duty during 2010 to 2014.
4. Para No. 4 is incorrect. During 2010 to 2014 the Appellant did not perform duty as there is no record of attendance & monthly reports.
5. Para No. 5 Reference Govt. of Khyber Pakhtunkhwa Health Department Notification No. SOH-III/10-4/2005/Homeo dated 27/05/2014 (Annex-C), the employees of Tibb & Homeopathic whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil Servants belonging to the same service or Cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank Junior to such other persons, if any, who in pursuance of the recommendation of the Commission or the Management Council or the Management Committee made before the commencement of this Act, are to be appointed to the respective service or Cadre, irrespective of their actual date of appointment.
6. In reply to Para No. 6 it is submitted that the Departmental Presentation of the Appellant was forwarded to the Competent Authority i.e. Secretary Health vide letter dated 08/10/2008 in reply of the same, a letter was received from Section Officer (III), Health Department, vide letter No. SO-III/10-4/2005(Homeo) dated 10/05/2018. The same is endorsed to the Medical Superintendent DHQ Hospital, Battagram for compliance and urgent response, which is still awaited.

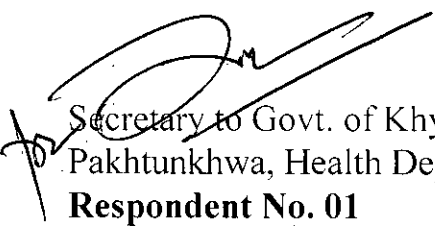
7. In reply to Para No. 7 it is submitted that the Appellant has got neither cause of action nor locus standi to file the instant Appeal.

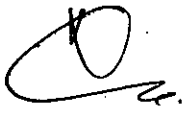
ON GROUNDS:

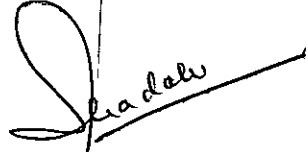
- a. Para-a is incorrect, as mentioned in the preceding paras.
- b. Para-b That depends upon the recommendation of the Commission or the Management Council or Management Committee.
- c. Para-c. The time period in which he served the department, was paid for that period.
- d. Para-d As replied in the preceding para, the Appellant did not performed his duty for four years for that he was not paid.
- e. Para-e Regarding complaint the Appellant had drawn salary & other benefits illegally for the period of more than 5 years (Annex-D).

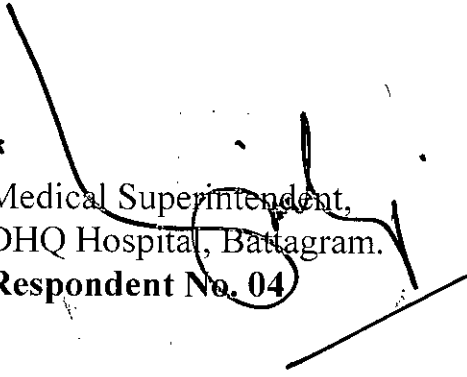
Prayer:

It is therefore humbly prayed that the claim of the appellant to the extent of the replying respondent may very graciously be dismissed with cost.


Secretary to Govt. of Khyber
Pakhtunkhwa, Health Department.
Respondent No. 01


District Health Officer, Battagram.
Respondent No. 03


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


Medical Superintendent,
DHQ Hospital, Battagram.
Respondent No. 04

Annexure "A"

Reminder II



DIRECTORATE GENERAL HEALTH
SERVICES, GOVT; KHYBER
PAKHTUNKHWA, PESHAWAR.

NO 9306-16 /Personnel

DATED 08 /09/2015

To,

Medical Superintendents /
DHQ Hospital Battagram, Charsadda, DIKhan, Hangu,
Mansehra, Mardan, Nowshera, Swabi, Tank.


Subject:

**MINUTES OF THE MEETING REGARDING CLARIFICATION OF THE
INTERVENING PERIOD OF HOMEO DOCTOR AND TABBEEBS
WHOSE CONTRACT/ ADHOC SERVICES REGULARIZED UNDER
KHYBER PAKHTUNKHWA PESHAWAR TIBB AND HOMEOPATHIC
EMPLOYEES ACT 2014..**

Memo:

I am directed refer to this Directorate letter No.3845-80/personnel dated
06.04.2015, and Reminder No.6213-14/Personnel dated 10.06.2015, on the subject
noted above.

You are once again requested to submit a certificate duly supported by
authentic proof to the effect that the Homeo Doctors/ Tabeeps were actually holding
their posts and performing duties from 01.07.2010 till commencement of the Khyber
Pakhtunkhwa Tibb and Homeopathic employees regularization of Service Act 2014.

 08/9/15
ASSISTANT DIRECTOR (PERSONNEL-II)
DIRECTORATE GENERAL HEALTH
SERVICES, KHYBER PAKHTUNKHWA
PESHAWAR.

Cc:

PA to DGHS, Khyber Pakhtunkhwa Peshawar.

For information please.

*Account sent
do as directed.
- Same
14/9/15*



OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL BATTAGRAM

MS Office Phone No. 0997-311518 Email Address;
Casualty Dept Phone No, 0997-310018 Fax No,

dhqbtg518@yahoo.com
0997-311518

No, 3039-41 /Homeo /Tibb dated 17.09.2015

The

Director General Health Services,
Khyber Pakhtunkhwa Peshawar

Subject:

MINUTES OF MEETING REGARDING CLARIFICATION OF THE INTERVENING PERIOD OF HOMEO DOCTOR AND TABBEEBS WHOS CONTRACT/ADHOC SERVICES REGULARIZATION UNDER KHYBER PAKHTUNKHWA PESHAWAR TIBB AND HOMEOPATHIC EMPLOYEES ACT 2014..

Reference:-

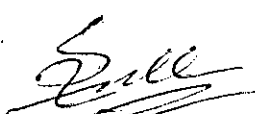
- I- Your letter No, 3845-80/Personnel Dated 6.4.2015.
II- Your 2nd Remainder vide No, 9406-16/Personnel Dated 08.09.2015.

It is submitted that the Homeo /Tibb Project have been closed /expired on 30.06.2010 and after expiry of the project no instruction nor order received from higher up about their duties to be continued or otherwise .

Homeo Doctor and Homeo Hakim of the homeo project in this hospital did not performed their duties after expiry of the project from 01.07.2010 till the commencement of the Act 2014. In compliance of the Act 2014 , their arrival date as is under.

S No	Name	Designation	Date of Arrival
1-	Dr Muhammad Irshad	Homeo Doctor B-16	24.06.2014(FN)
1-	Shah Ibraheem	Homeo Hakim B-16	21.06.2014(FN)

Enclosed (2) Charge Assumption copies attached.


Medical Superintendent
DHQ Hospital Battagram

No & date even above:-

Copy forwarded to the;-

- 1- District Health Officer Battagram for information please.
- 2- District Accounts Officer Battagram for information and necessary action please.


Medical Superintendent
DHQ Hospital Battagram



GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 27th May, 2014

NOTIFICATION

No. SOH-III/10-4/2005/HOMEQ. In pursuance to the Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014, the Competent Authority is pleased to regularize the services of the following Homeo Doctors and Tabeeps w.c. from 17-05-2007 against the posts which they are holding:-

S.NO	NAME / FATHER NAME	PLACE OF POSTING	DESIGNATION/BPS
1.	Dr. Hamayun Yaqoob S/o Muhammad Yaqoob	DHQ Hospital Abbottabad	Homeo Doctor (BS-16)
2.	Hakeem Mustafa Khan S/o Mohd Anwar	DHQ Hospital Abbottabad	Hakeem BS-16
3.	Dr. Muhammad Irshad S/o Abdul Sadiq	DHQ Hospital Battagram	Homeo Doctor BS-16
4.	Hakeem Shah Ibrahim S/o Mohd Fazak Shah	DHQ Hospital Battagram	Hakeem BS-16
5.	Dr. Rahim Khan S/o Rasool Khan	DHQ Hospital Dagar Buner	Homeo Doctor BS-16
6.	Hakeem Syed Muhammad Noorul Islam S/o Umar Said	-do-	Hakeem BS-16
7.	Dr. Zain ur Rehman S/o Amanullah	DHQ Hospital Chitral	Homeo Doctor BS-16
8.	Hakeem Abdul Rehman S/o Muhammad Nazir	-do-	Hakeem BS-16
9.	Dr. Sarfaraz S/o Karim Dad	DHQ Hospital Haripur	Homeo Doctor BS-16
10.	Hakeem Sohail Razaq S/o Abdul Razaq	-do-	Hakeem BS-16
11.	Hakeem Muhammad Nasir Rafiq S/o Abdul Majeed	DHQ Hospital Malakand	Hakeem BS-16
12.	Dr. Samiul Haq S/o Abdur Rauf	DHQ Hospital Mansehra	Homeo Doctor BS-16
13.	Hakeem Muhammad Saleem S/o Qazi Habib ur Rehman	-do-	Hakeem BS-16
14.	Dr. Najcebullah S/o Janat Gul	DHQ Hospital Mardan	Homeo Doctor BS-16
15.	Hakeem Muhammad Noor Akbar S/o Akbar Khan	-do-	Hakeem BS-16
16.	Dr. Syed Altaf Hussain Shah S/o Syed Abdul Qayum	DHQ Hospital Shangla	Homeo Doctor BS-16
17.	Dr. Rani yar Qand D/o Yar Qand	DHQ Hospital Swabi	Homeo Doctor BS-16
18.	Hakeem Insanul Haq S/o Sahib ul Haq	DHQ Hospital Swabi	Hakeem BS-16
19.	Dr. Ajab Khan S/o Nazar Khan	SGTH Swat	Homeo Doctor BS-16
20.	Hakeem Muhammad Rahim Ghori S/o Mohd Shoaib	SGTH Swat	Hakeem BS-16

21	Dr. Khaliq Noor S/o Muhammad Noor	DHQ Teaching Hospital Bannu	Homeo Doctor BS-16
22.	Hakeem Sahib ur Rehman S/o, Abdur Rehman	-do-	Hakeem BS-16
23.	Dr. Syed Noor Umar Shah S/o Syed Saadat Noor Shah	DHQ Hospital Charsadda	Homeo Doctor BS-16
24.	Hakeem Asad Jan S/o Lachi Gul	-do-	Hakeem BS-16
25.	Dr. Iftakhar Elahi S/o Mehboob Elahi	DHQ Hospital D.I Khan	Homeo Doctor BS-16
26.	Hakeem Mohd Abdullah Zafri S/o Sanatullah Khan Zafri	-do-	Hakeem BS-16
27.	Dr. Mohd Faheem Khan S/o Abdul Khaliq	DHQ Hospital Lower Dir	Homeo Doctor BS-16
28.	Hakeem Fazal Rabi S/o Fazal Mohd	-do-	Hakeem BS-16
29.	Dr. Sahib Zada Najib Alam S/o Sahib Zada Qutbe Alam	DHQ Hospital Upper Dir	Homeo Doctor BS-16
30.	Hakeem Khanzada S/o Jafar Khan	-do-	Hakeem BS-16
31.	Dr. Siraj Ali S/o Babo Bahadir Ali	DHQ Hospital Hangu	Homeo Doctor BS-16
32.	Hakeem Falak Naz S/o Mir Nawaz Khan	-do-	Hakeem BS-16
33.	Dr. Ihteshamul Haq S/o Moor Shah Gul	DHQ Hospital Karak	Homeo Doctor BS-16
34.	Hakeem Sultan Mohd Shah S/o Noor Mohd Shah	-do-	Hakeem BS-16
35.	Dr. Rafiullah Khan S/o Daraz Khan	DHQ Hospital Kohat	Homeo Doctor BS-16
36.	Dr. Mohd Iqbal Khan S/o Raees Khan	DHQ Hospital Lakki Marwat	Homeo Doctor BS-16
37.	Hakeem Habibur Rehman S/o Eid Akbar Khan	-do-	Hakeem BS-16
38.	Hakeem Wahid ud Din Anwar S/o Ahmad Rafiq Din	DHQ Hospital Nowshera	Hakeem BS-16
39.	Dr. Dawood Iqbal S/o Abdul Qudoos	City Hospital Peshawar	Homeo Doctor BS-16
40.	Hakeem Mohd Younas Faheem S/o Mohd Yousaf Azeem	City Hospital Peshawar	Hakeem BS-16
41.	Dr. Khalil ur Rehman S/o Malik Zangbar Khan	DHQ Hospital Tank	Homeo Doctor BS-16
42.	Hakeem Hafiz Mohd Asad S/o Yar Muhammad	-do-	Hakeem BS-16
43.	Dr. Azizud Din S/o Abdul Wasig	DHQ Hospital Kohistan	Homeo Doctor BS-16
44.	Hakeem Syed Nizam Ali Shah S/o Syed Abas Ali Shah	-do-	Hakeem BS-16

Terms & Conditions are given as under:-

- i) All employees of Tibb and Homeopathic appointed on contract adhoc basis and holding posts on 30th June, 2010, or till the commencement of this Act, shall be deemed to have validly be

appointed on regular basis having the same qualification and experience for a regular post.

- ii) The employees of Tibb and Homeopathic whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who in pursuance of the recommendation of the Commission or the Management Council or the Management Committee made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.
- iii) The seniority interse of the employees of Tibb and Homeopathic, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre.

Provided that if the date of continuous officiation in the case of two or more employees of Tibb and Homeopathic, the employee older in age shall rank senior to the younger one.

SECRETARY HEALTH

Endst even No & date.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Secretary, Provincial Assembly of Khyber Pakhtunkhwa.
3. The Director General Health Services Khyber Pakhtunkhwa. w/r to his letter No.3703/Personnel dated: 21-05-2014.
4. All DHO's, Khyber Pakhtunkhwa.
5. All Chief Executive, Khyber Pakhtunkhwa.
6. All Medical Superintendent, Khyber Pakhtunkhwa.
7. All District Accounts Officer, Khyber Pakhtunkhwa.
8. PS to Minister Health Khyber Pakhtunkhwa.
9. PS to Secretary Health, Khyber Pakhtunkhwa.
10. PA to Special Secretary Health, Khyber Pakhtunkhwa.
11. PA to Additional Secretary (E) Health Khyber Pakhtunkhwa.
12. All Homeo Doctors/Hakeem's concerned.

(WAJID ALI KHAN)
SECTION OFFICER-III

OFFICE OF THE DISTRICT HEALTH
OFFICER BATTAGRAM.

6

No. 2068-73 / Dated 23/10/2014.

To,

1. Dr. Mohammad Irshad (Hemeo)
DHQ Hoispital Battagram
2. Mr. Shah Ibrahim (Tibb/Hakeem)
DHQ Hospital Battagram.

Subject:- **IRREGULAR DRAWL OF PAY AND ALLOWANCES**

Memo.

It has come to the notice of undersigned vide District Accounts Officer Battagram letter No. 1871-74 dated 14.10.2014, that you both have drawn your arrear of pay allowances amounting to Rs. 2599596/- of re-instated period for more than 5 years with out obtaining approval/sanction of finance department Govt: of KPK and with out countersignature of Medical Superintendent DHQ Hospital Battagram, which is gross embezzlement/act of robbery to Government. Your this act is liable to misconduct of Financial Rules and required disciplinary proceeding against you under E & D Rules.

You both are directed to deposit the illegally drawn amounting to Rs. 1299798/- each in to Govt: Treasury and challan be produced to the undersigned with in seven days positively, otherwise necessary disciplinary action under E&D rule will be taken against you and your case will be referred to the competent authority for further necessary action.

You are further directed to explain the reason of this un law full act that under what circumstance you bypass your immediate boss. Your written reply must reach to the undersigned office along with a copy of challan to proceed further in the matter.

District Health Officer,
Battagram.

Copy forwarded to the:-

1. P.A to Secretary to Govt: of KPK Health Department Peshawar for information and necessary action please.
2. P.A to Director General Health Services KPK Peshawar for information and necessary action please.
3. District Accounts Officer Battagram with reference to his No quoted above for information with the request that in future do not entertain any kind of bill with out countersignature of Medical Superintendent/DHO concerned please.
4. Medical Superintendent DHQ Hospital Battagram for immediate necessary action.

District Health Officer,
Battagram.

23/10/14

OFFICE OF THE DISTRICT ACCOUNTS OFFICER BATTAGRAM

Dated 14-10-2014

No.GAD/DAO/BM-/2014-2015/1871-74

To

Hemeo Dr, Muhammad Irshad
DHQ Hospital BattagramSubject:
Memo,**IRREGULARA PAYMEANT**

Refer to the Govt: of Khyber Pakhtunkhwa Health Department Notification No. SOH-III/10-4/2005/HEMEO dated 27-5-2014, in pursuance to the Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of service) ACT, 2014 the Competent Authority to regularize the service of Tibb and Homeopathic with effect from 17-5-2014 in respective of their actual date of appointment. Moreover, the Seniority inters of the employee of Homeopathic whose services are regularized under ACT 2014, in the process of attaining service at the commencement of this ACT shall rank junior to civil servant belonging to the same service of cadre.

In the Act 2014 it is expedient to provide for regularization of the service of employee of Homeopathic appointed on contract on contract or adhoc basis in the public interest.

In the above fact that the Government of Khyber Pakhtunkhwa Health department not declared /settle the intervening period with out pay, duty or leave wick may be required to settle the case. In this regard your pay and allowance in the basic pay scale is hereby fixed in the minimum pay scale B-16 as under.

BPS-16(10000-800-34000)

Pay on 1-7-2014 Rs. 10000

HRA	Rs.1818
UAA	Rs.1500
CA	Rs 5000
AR-10	Rs.3030
MA	Rs.909
AR-11	Rs. 909
AR-12	Rs. 1212
AR-13	Rs. 1500
AR-14	Rs. 1000
Total	Rs. 23848

During the course of post audit it has come to the notice to made irregular payment amounting to Rs.1299798/-to you which may please be refund in to Government Treasury without further delay a copy of the challan may also be provided to this office with in one week after receipt of this letter otherwise this office approach to higher authority against you for disciplinary action under Rule E&D 1973.

District Accounts Officer
Battagram

Copy forwarded to:

- 1- The Secretary Health Services Govt: of Khyber Pakhtunkhwa Peshawar for necessary action please
- 2- The Director General Health Peshawar for similar action please
- 3- The District Health Officer Battagram with the request to look in to the matter personally and necessary action please.

District Accounts Officer
Battagram.

Pomicial

STATE BANK OF PAKISTAN *Battagram*

Dated the 30/11/2014 200 *(8)*

Received from the bearer *Dr. Iqbal J. MS DH Hospital*

the sum of Rs 300000/- *Three Lakhs* *Battagram*

to be credited to Government account *under the name*

on account of *Ref. n. 72 Dr. Iqbal J. MS DH Hospital* *Battagram*

(See reverse)
This portion to be returned to the payee registered by the Agent.

Note: The Bank Agent is instructed not to receive money unless both portion the invoice are carefully and clearly filed in.

MSBPT 200.

(See reverse)

**District Accounts Officer
BATTAGRAM**

No. 2748-521 dated Battagram the 23 /10/2014.

From: The Medical Superintendent,
D.H.Q. Hospital Battagram.

To,

1. Homeo Dr. Mohammad Irshad,
DHQ Hospital Battagram.
2. Shah Ibrahim, Tibb/ Hakim,
DHQ Hospital Battagram.

Subject:- **IRREGULAR PAYMENT**

Memo:

It came to the notice of the undersigned that you have drawn pay and allowances including arrears amounting Rs. 1299798/- each of the period from 17.05.2007 to 27.05.2014 with out information, prior approval or countersignature of the undersigned being Medical Superintendent, drawing disbursement of the institution. On the result of your this illegal approach Government sustained loss of Rs. 2599596/- which came under the purview of embezzlement /act of robbery to government money and need to lodge FIR against you under the rules. In the same matter District Accounts Officer Battagram vide his letter No. 1871-74 dated 14-10-2014 addressed to you copy endorsed to the undersigned that irregular payment amounting Rs:1299798/- each including monthly salary has been made to you, which may need to be refunded to government treasury with in a one week with out further delay & copy of challan be produced to District Account Office for official record otherwise they should approach against you to the higher authority to initiate disciplinary action under E&D rules as mentioned in the letter.

You are hereby directed to deposit the mentioned amount challan in the government treasury immediately but not later than one week & explain your position about the matter urgently, otherwise necessary disciplinary action under the E & D Rule. 1973 will be taken against you and your case will be referred to the competent authority for further action.

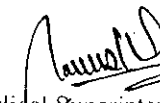
Medical Superintendent,
DHQ Hospital Battagram.

No. _____/

Copy forwarded to the:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa Peshawar.
3. The District Accounts Officer Battagram w/r to letter no quoted above.

For information and necessary action.

o/c 
Medical Superintendent,
DHQ Hospital Battagram. 23/10/14