

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL,PESHAWAR AT CAMP COURT D.I.KHAN.

Appeal No. 957/2015

Date of Institution

11.08.2015

Date of Decision

19.02.2018

Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar Wala, Dera Ismail Khan.
... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar and 5 others. (Respondents)

MR. MUHAMMAD WAQAR ALAM,

Advocate

- For appellant.

MR. USMAN GHANI,

District Attorney

-- For respondents

MR. AHMAD HASSAN,

MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER(Judicial)

<u>JUDGMENT</u>

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

FACTS

2. The brief facts are that the appellant was appointed as Junior PHC Technician on 25.04.2013. His services were terminated vide impugned order dated 15.04.2015 without solid justification. He preferred departmental appeal on 08.05.2015 which was not responded within stipulated period, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as Junior PHC Technician (BPS-09) vide order dated 25.04.2013. Vide impugned order dated 15.04.2015 his services were terminated without assigning any reason. He preferred departmental



appeal on 08.05.2015 which was not responded, hence, the instant service appeal. He further argued that the appellant was appointed after observance of all codal formalities It has been held by the august Supreme Court of Pakistan with in case where appointments are termed as illegal by the respondents action should be taken against government officials responsible making such appointments instead of affected employees. Opportunity of due process and fair trial were denied to him and as such he was condemned unheard. Reliance was placed on case reported as 2003 SCMR 1110, PLJ 2004 SC 216, 2012 SCJ 780, 2015 PLC (C.S) 1519 and judgment of this Tribunal dated 25.10.2017 passed in service appeal no. 878/2016 titled "Shafiq-ur-Rahman-vs-Govt: of Khber Pakhtunkhwa, through Secretary Health Department, Khyber Pakhtunkhwa Peshawar and 3 others."

4. On the other hand learned District Attorney argued that his services were terminated because codal formalities were not observed by the competent authority during the course of his appointment. Moreover, he remained absent after appointment so action taken against him is fully justified under the rules.

CONCLUSION.

5. Careful perusal of record would reveal that the appellant was appointed by the competent authority as is evident from the appointment order dated 25.04.2013. He assumed the charge and started performing duties. Para-1 of the termination is very strange, wherein it is mentioned that you were appointed by Ex-DHO District Tank and without observing codal formalities. It is a sufficient proof that his service by terminated by the successor of Ex-DHO, which smacks of malafide/ personal grudge and extraneous influence on the part of the officer concerned. He was bound to follow law and rules. It has not been disputed by the respondents that the appellant fulfilled the required qualification for the said post and was eligible for appointment. Once a person is appointed a vested right is created and appointment cannot be withdrawn without following the due process of law. In the present circumstances the appellant was condemned unheard.

As a nutshell to the above discussion, the appeal is accepted. Impugned order dated 15.0 2015 is set aside and the appellant is reinstated into service with the direction to the respondents to examine his case to ascertain whether hereligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)

MEMBER

CAMP COURT D.I.KHAN

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

<u>ANNOUNCED</u> 19.02.2018

19.02.2018

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

Vide our detailed judgment of today placed on file, the appeal is accepted. Impugned order dated 15.05.2015 is set aside and the appellant is reinstated into service with the direction to the respondents to examine his case to ascertain whether he eligible to hold the post or not and shall dispose of the same after providing opportunity of hearing to the appellant. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)

MEMBER

CAMP COURT D.I.KHAN

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

<u>ANNOUNCED</u> 19.02.2018

26.12.2017

Bench is incomplete. To come up for arguments on 27.12.2017.

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

27.12.2017

Clerk to the counsel for appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. Clerk to the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 19.02.2018 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

22.02.2017

Appellant in person, Mr. Muhammad Ramzan, Officer Assistant and Mr. Muhammad Shakoor, District Accounts Officer alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Written reply by respondents No. 1 to 5 has already submitted. Written reply by respondent No. 6 not submitted. Mr. Abdul Shakoor, District Accounts Officer is directed to submit the written reply on next date positively. To come up for written reply/comments on behalf of respondent No. 6 on 26.07.2017 before S.B at Camp Court D.I.Khan.

(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan

26.07.2017

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. None present on behalf of respondent No. 6 therefore, proceeded ex-parte. Written reply on behalf of respondents No. 1 to 5 has already submitted. Learned counsel for the appellant also submitted rejoinder and copy handed over to learned District Attorney for arguments. Adjourned. To come for arguments on 27.11.2017 before D.B at Camp Court D.I.Khan.

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

27.11.2017

Clerk of the counsel for appellant present. Mr. Farhaj Sikandar, District Attorney 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

24.05.2016

Counsel for the appellant, Dr. Aziz Ullah, DDHO and Mr. Muhammad Ramzan, Assistant alongwith Mr. Farkhaj Sikandar, GP for respondents present. Representative of the respondents requested for time to submit written reply. To come up for written reply on 25.10.2016 at camp court D.I. Khan.

Member
Camp Court D.I.Khan

25.10.2016

Counsel for the appellant and Mr. Muhammad Ramzan, Office Assistant alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Written reply by respondents not submitted and requested for further time. Request accepted. To come up for written reply /comments on 27.12.2016 before S.B at Camp Court D.I.Khan.

Camp Court D.P.Khan

27.12.2016

Appellant in person, Dr. Azizuiian, DHO, Dr. Inayatullah and Muhammad Ramzan, Office Assistant along with Mr. Farhaj, Sikandar, Government Pleader for the respondents present. Written reply on behalf of respondents No. 12 to 5 submitted copy whereof handed over to appellant. Representative of respondent No. 6 is not in attendance therefore notice be issued to respondent No. 6 for written reply/comments for 22.02.2017 at Camp Court D.I.Khan.

ASHFAQUE TAJ MEMBER Camp Court D.I.Khan Appeel No. 957/15 Mr. Milgimmi Offissain.

23.11.2015

Counsel for the appellant and submitted that the appellant was appointed on 25.4.2013 who was terminated from service vide impugned order dated 15.4.2015 on malicious and unfounded grounds. That no charge sheet or enquiry was conducted nor opportunity of show cause and personal hearing was provided to the appellant. That departmental appeal of the appellant has not been responded. He submitted that the impugned order is unlawful perverse and illegal and liable to be set aside and the appellant reinstated into service with all back benefits.

Points raised need consideration. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments at camp court,

D.I.Khan on 36-1-2016

MEMBER Camp Court, D.I.Khan

26.01.2016

Counsel for the appellant present. Fresh notices be issued to the respondents through registered post and case to come up for filing of written reply on 24.5.4 at camp court, D.I.Khan.

Camp Court D.I.Khan

Form- A FORM OF ORDER SHEET

Court of _ '		
Case No	ł	1957 /2015

	Case No	12//2015
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24.08.2015	The appeal of Mr. Muzamil Hussain resubmitted today
		by Mr. Muhammad Waqar Alam Advocate may be entered in the Institution register and put up to the Worthy Chairman for
	,	proper order.
		REGISTRAR
2	27-9-15	This case is entrusted to Touring Bench D.I.Khan for
	•	preliminary hearing to be put up thereon 27 -10-1.
	-1	
	†	CHAIRMAN
, ;		The state of the s
5.	27.10.2015	Counsel for the appellant present and
	·	requested for adjournment. Therefore, case to come up for
		preliminary hearing at camp court, D.I.Khan on
		23 / (rth) no. n , in the cities to a
		MEMBER Camp court, D.I.Khan
		Jump Court, 2 miles
		·
		·
		·

The appeal of Mr. Muzamil Hussain son of Muhammad Jahangir r/o Jabbar Wala Dera Ismail Khan received today i.e. on 11.08.2015 is returned to the counsel for the appellant with the direction to submit three more spare copies/sets of the memorandum of appeal along with annexures i.e. complete in all respect within 10 days.

No. 1196 /S.T.

Dt. 11 /8 /2015.

KHYBER PAKHTUNKHWA PESHAWAR.

Mr.Muhammad Wagar Alam Advocate High Court D.I.Khan

Respected Str.

objection removed and re submilled for further legal process.

Yours humble applicant
Through Counsel;
Through counsel;



VICE TRIBUAL, CAMP AT DIKHAN

rin service Appeal No. 957 /2015

Muzamil Hussain (Petitioner)

VERSUS

GOVT of KPK etc (Respondents)

INDEX

S.No.	Description of documents	Annexures	Pages
1	Appeal alongwth affidavit		1-7-10
2	Copies of appointment order of appellant	A	11
3	Copies of arrival report and medical certificate of appellant	B & C	12-13
4	Copy of posting order No. 1051/ of Appellant	C	14-15
5	Copy of Impugmed Termination order	D	16
6	Copy of Departmental appeal	E	17
7	Vakalatnama	Muhammad waqar Alam	18

Dt:<u>0</u>5.08.2015.

Appellant's counsel

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR, CAMP

DIKHAN

Service Appeal No. 957 /2015

A.W.F. Provised Service Tribuaci Diary No 955 Sated 11-8-235

Muzamil Hussain s/o Muhammad Jahangir R/o Jabbar Wala, Dera Ismail Khan.

(PETITIONER)

VERSUS

- 1. Government of KPK, through secretary Health Department, KPK Peshawar.
- 2. Secretary to Govt: of KPK, Health Department,
 Peshawar.
- ____3. Director General Health services, крк Резhawar.

Director (Administration), Director general health services, KPK Peshawar.

District Health officer (DHO), District Tank.

District Accounts Officer, District Tank

..... (RESPONDENTS)

and filed.

Registral 241811

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. 1220/ DATED 15.04.2015 ISSUED BY RESPONDENT NO.5/DHO, TANK, WHEREBY APPELLANT WAS TERMINATED FROM SERVICE AND AGAINST THE OMISSION ON THE PART OF RESPONDENT

NO.3 FOR INDICISION OF THE DEPARTMENTAL APPEAL WHICH IS AGAINST THE LAW AND IN VIOLATION OF SERVICES LAWS AND RULES AND THE APPELLANT WAS CONDEMNED UNHEARD WITH MALAFIDES.

PRAYER

On acceptance of this appeal, impugned order No. 1220 dated 15.04.2015 issued by respondent No.5 may please be reversed and set-aside and respondents be directed to reinstate the appellant in service with all back benefits.

Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

- Technician (MP) Insect collector (BS.9) vide appointment order No. 1013-15 dated 25.04.2013 in health Department. The appellant submitted his arrival report and medical certificates and joined his services. Copy of appointment order of Appellant is annexed as "Annexure "A". Copy of arrival report is also annexed as "Annexure B" and copy of medical certificate is annexed as "Annexure B" and copy of medical certificate is
- 2. That thereafter, appellant was posted at BHU Cheena vide office order No. 1051 dated 30.04.2014, copy whereof is enclosed as **Annexure "C"**.
- 3. That services of the appellant continued till 2015 without ant stain and stigma and he performed his

duties to his best but Respondent No. 5/ DHO firstly stopped salary and subsequently issued termination Order No. 1220/ dated 15.04.2015 with certain reasons mentioned therein. Copy of impugned termination order is enclosed as **Annexure "D"**.

- 4. That Feeling aggrieved from the termination order, the appellant preferred departmental appeal to respondent No.3/Director General Health services being appellate authority on 08.05.2015. Copy of departmental appeal is annexed as **Annexure "E"**.
- 5. That uptill now no response has been shown from the respondents and after the laps of statutory limitation of departmental appeal, cause of action has been accrued to the appellant for the instant appeal, Hence the instant service appeal.
- 6. That jurisdiction of this worthy service tribunal is being invoked in attending circumstances against the impugned termination order No. 1220/ dated 15/04/2015, inter alia on the following grounds amongst others;

GROUNDS

- a. That the impugned termination order No. 1220/ dated 15.04.2015 and indicision of appellant's departmental appeal is illegal, against services Law and rules, without jurisdiction, in violation of the precidents of Honourable epic courts of the country and is not justifiable for any reason whatsoever.
- Multipurpose (Insect Collector) in 2013 and after submission of all formalities, District Accounts officer Tank checked salary form, verified the same for activation of salary and personal computer salary Number 00717508 was also allotted. Since then,

Appellant has been serving health department and invested his full skill, energy and honesty in performance of his duties. But, act of respondents is injustice to with appellant and termination order is against Law.

- c. That reasons mentioned in impugned termination order are baseless and termination order was issued without adopting any codal formalities and without any show cause notice to appellant. Hence, the appellant was condemned unheard.
- d. That in this regard at a number of occasions, it has been held by Supreme Court that if department feels certain prior appointments as illegal then instead of penalizing petty employees like Chowkidar, Naib Qasid, Junior Clerks etc, who have to earn livelihood to support their families, action shold be taken against the authority who had mis-exercised its powers. Relience is placed on 2012 SCJ 780 for ready reference.
- e. The act/refusal/omission on the part of respondents is not grounded in reason nor it smacks of sensible or saner approach.
- f. That appellant being citizen of Pakistan deserves to be dealt in accordance with law and the treatment meted out to him is in violation of Article 4 of our Constitution.

It is thus most respectfully prayed that on acceptance of this appeal, this worthy Tribunal may graciously be pleased to set-aside/reverse impugned order No. 1220/ dated 15.04.2015 and declare such order as illegal, void and devoid of merits. Consequently, appellant may please be reinstated in service with all back benefits. This appeal may please be allowed with costs. Any other relief deemed appropriate in circumstances of the case

may also be allowed in favour of appellants as against respondents with costs.

<u>5 / 8</u> /2015

Your humble appellant

Muzamil Hussain

Muhammad Waqar Alam

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Court.

<u>5.8</u>.2015

Appellant

WATER

NOTE

Appeal with annexure along-with required sets thereof are being presented in separate file covers.

5.8.2015

Books Referred

- 1. PLC 2014 P # 330
- 2. PLR 2014 P# 1443
- 3. 2006 SCMR P # 678
- 4. 2012 PLC (C.S) P# 112
- 5. PLC 2012 (C.S) P # 1099 +1203+1232

BEFORE THE HONOURABLE SERVICE TRIBUNAL, DIKHAN **BENCH**

In	S.A	No.	/20	15

Muzamil Hussain

Versus

Govt: of KPK,

(Appellant)

(Respondents)

AFFIDAVIT

- I, Muzamil Hussain appellant herein, do hereby solemnly affirm on oath:-
- That the accompanying appeal has been drafted by counsel following our instructions;
- That all parawise contents of the appeal are true and correct to the best of my knowledge, belief and information;
 - That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein is based on exaggeration or distortion of facts.

<u>5.8</u>.2015

3.

Deponent

ar Alam

Identified By:-

Muhammad Waqar Alam

Advocate High Court,

D.I.Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL CAMP DIKHAN.

C.M No	/2015	•
In Service	Appeal No	2015

MUZAMIL HUSSAIN / (Applicant/Appellant)

Versus

GOVT. Of KPK etc (Respondents)

AN APPLICATION FOR INTERIM RELIEF

Respectfully Sheweth;

- That contents of the main appeal may please be read as an integral part of this application.
- 2. That appellant being poor fellow, the instant job is only the source of income of his family. Till final decision of the instant appeal, the respondents may please be directed to allow the appellant to perform his duty and releasing of his salary is just according to justice.
- 3. Appellant has good prima facie case both on law and facts
- 4. That the balance of inconvenience tilts in favour of issuance of interim relief.

It is thus prayed that on acceptance of this application, the operation of the impugned temination **letter No.** No. 1220/dated 15/04/2015 may please be suspende till final adjidication of the main appeal. Consequently, appellant may please be

allowed to perform his duties and his salary may please be release till final decision of the instant appeal.

5.<u>8</u>.2015

Your humble applicant

went

Muzamil Hussain

Muhammad Waqar Alar

BEFORE THE HONOURABLE SERVICE TRIBUNAL CAMP DIKHAN.

C.M No	/2015	
In Service Ar	opeal No.	2015

Muzamil Hussain (Applicant/Appellant)

Versus

Govt. Of KPK etc (Respondents)

AFFIDAVIT

I, Muhammad Waqar Alam, counsel for appellant, as per instructions of my client, do hereby solemnly affirm on oath that all parawise contents of the above application are true and correct to the best of my knowledge, belief and information, as communicated to me; that nothing has been deliberately concealed or kept secret from this august Tribunal.

<u>5</u>.<u>8</u>.2015

OFFICE OF THE DISTRICT HEAD OFFICER TANK



No: 1013 - 15 1

Dated: 25 / 04 /2013.



То

Mr: Muzamil Hussain S/O Mohammad Jehangir R/O Village Jabbar Wala District DIKhan.

Subject: OF APPOINTMENT.

Memo

The Govt: hereby offers you a post of Jr. PHC Technician (MP) insect Collector against the vacant post of under the control of this office in BPS-09 Viz: @ Rs 6200-380-17600/-PM plus usual allowances as admissible under the rules and subject to revision time to ti-me on the following terms and conditions according to the Government Policy.

- Your appointment in the Health Department is purely on temporary Basis and your services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that you may belong to a post other than one to which you are recruited.
- 2. You have to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
- 3. You will be governed by such rules and orders relating to leave, TA, Medical charges as may be issued by the Govt: from time to time for the category of Government Servant to which you may
- If you accept the offer on the above conditions you should report to this for further duty within fifteen 4. (15) days of the receipt of this letter, failing which your services will be terminated.
- 5. The appointment will be subject to the production of Medical Plinese Certificate.

TANK.

Cc: -

- 1. District Accounts Officer, Tank.
- 2. Account Clerk of this Office.
- Estab: Clerk of this office.

DISTRICT HEALTH OFFICER TANK.

Hester Landing



ت طاب OHO ما حب کا ناس علم کا ظر حناحب عالى はにもっていていましている。 منر ۱۵۵۱ مرفر ۱۱- ۲-30 ک طابق فی ایج نو توپیم ر ما عزران کرری سے. Asrival Report Up I willy سرطور کی طائے الما عن نواز ش مول 1-05-2014 20 مرمل صی مسریامسی وازر - 2 6 10 Em what water and MA Place 110 B. H. W. Cheena 110 B. H. W. Cheena 110 B. H. W. Cheena

MEDICAL CERTIFICATE

Seal of Office

a candidate for employment in the Office of the D.H.O. TIME
and can not discover that head any disease communicable or other constitutional efficetion or bodily infirinity except.

I. do not consider this as disqualification for employment in the office of the His age according to his own statement.

Building Hussian All Statement of the Statem

LEFT HAND THUMB AND FINGER IMPRESSIONS.

Medical Superintendent,

KDistort land



OFFICE OF DISTRICT HEALTH OFFICER TANK

No. 1051

/04/2014

Dated . .

DIKhan the 30 / 04/2014

OFFICE ORDER

Mr. Muzamil Hussain Jr: PHC Tech: (MP) Insect Collector attached to this office is hereby directed to report for duty at BHU Cheena with immediate effect in the interest of public services.

District Health Officer
Tank

CC

- 1- Incharge BHU Cheena.
- 2-. Establishment Clerk of this office.
- 3- Accountant of this office.

District Health Officer

Aman



OFFICE OF THE DISTRICT HEALTH OFFICER DISTRICT TANK

Phone 0963 510755

Fax: 0963 510755



DATED 15/04/2015

Mr. Muzamil Hussain S/o Muhammad Jehangir, R/o Village Jabbar Wala District D.I. Khan.

TERMINATION ORDER.

Memo,

You were appointed by ex: DHO, District Tank vide this office order bearing no. 1013-15 dated 25-04-2013 and your services are hereby terminated on the following grounds:

- No Advertisement.
 - 2. No proper selection committee constituted.
 - 3. No criteria are issued for the post of Insect Collector.
 - 4. You have a domicile of District D.I. Khan which is against the Government rules.
 - 5. Your persist absence from the duty of so called appointment.

DISTRICT NEALTH OFFICER DISTRICT TANK

Copy to the:

- 1. Account Clerk.
- 2. Office File for record.

DISTRICT HEALTH OFFICER **DISTRICT TANK**







The Director General Health Services, Khyber Pakhtunkhawa Peshawar. (Appellant Authority)

Subject:-

APPEAL AGAINST UN LAWFULL TERMINATION.

R/Sir,

With due respect and humble submission, I have the honour to state that I was appointed as JCT Multipurpose (Insect Collector) in BPS-09 vide District Health Officer Tank orders No. 1013-15/ dated 25/04/2013, (Photo copy attached) and since my posting I have regularly performing my duties in filed by the orders of the Ex-DHO Tank.

I was appointed against the vacant post and my salary form was sent to District Accounts Officer Tank for salary against the vacant post of Insect Collector in BPS-09 and the District Accounts Officer Tank properly checked my salary form and verified for activation of my pay and I have been allotted Personal No. 00717508 which can be verified from the Computer record, but subsequently the District Accounts Officer Tank instantly stop my pay without any cogent reason.

And now the District Health Officer Tank terminate my service vide his letter No. 1220/ dated 15/04/2015, (Photo copy attached) without observing codal formalities as in this connection neither any explanation has been called nor any show cause notice were issued to me, which is un-lawful and un justified.

R/Sir,

I belong to a very poor family and my aged parents and children's are deeply affected due to my termination from service.

It is therefore, requested to kindly consider my appeal on humanitarian grounds and issued necessary orders regarding my re-instatement into service and release of my salaries along with all back benefits.

I shall be highly obliged for your this act of kindness.

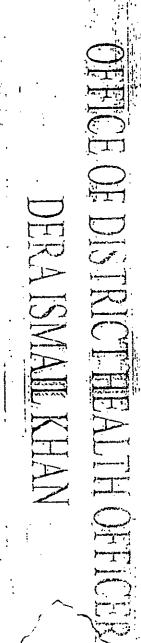
Yours obedient servant

08-5-15

Mr. Muzamil Hussain s/O Mohammad Jehangir Village Jabbar Wala DIKhan.

2. NO. 13811

(17) <u>E</u>



MALARIA SUPERVISOR'S TRAINING COPLETION CERTIFICATE

This is certified that Mr. Muzamil Hussain S/O Jehangir R/O Village Jabbar Wala District

DIKhan has undergone Voluntarily Training of "Malaria Supervisor" vide this office order. No. 276-78/NICP

dated 08-01-2013 for the Period of 03 Months with effect from 10-01-2013 to 10-03-2013 and he is well versant to the

Job of Malaria Supervisor

His work and conduct remained satisfactory during the period of training

Sindatur

District Health Officer

or Isin an Misticer

District Health Officer

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR</u>

Áppeal No. 957 of 2015

Muzamil HussainS/o Mohammad Jehangir R/o Jabbar Wala, Tehsil & District Dera Ismail Khan

(Appellant)

Versus:-

Government of Khyber Pakhtunkhwa through Secretary, Health and others (Respondents)

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT NO.1 to 5

PRELIMINARY OBJECTIONS.

- 1. That the appeal is not maintainable and incompetent in the eyes of Law in the present form.
- 2. That the appellant is estopped due to his own conduct to file this appeal.
- 3. That the appellant has got no cause of action and locus standee to file instant appeal.
- 4. That the appellant has not come to the Tribunal with clean hands and has suppressed all relevant facts.
- 5. That the appeal is bad for misjoinder/non-joinder of necessary parties.
- 6. That the appeal is badly time barred and the appellant has concealed the material facts from Honourable Tribunal.
- 7. That the Honourable Service Tribunal has no jurisdiction to entertain the instant appeal in its present form.
- 8. That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context, and is liable for Rejection.
- 9. That the appeal is weak having no force, fabricated, fictitious, based on ill will, mollified and having no footings in the eyes of law.
- 10. That proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this Honourable Tribunal.
- 11. That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

RESPECTFULLY SHEWETH

ON FACTS.

....

- Para.1. This Para is pertained to record, hence, no comments.
- Para. 2. This Para is also pertained to record, hence, no comments.
- Para. 3. This Para is correct to the extent that the services of the appellant were terminated on the grounds that the neither advertisement was made nor proper selection committee was constituted. Further, the appellant is the resident of Dera Ismail Khan and remained absent after his appointment. Similarly, the Government has not formulated new criteria for the post of Insect Collector. (Notification attached)
- Para. 4. This Para is correct to the extent that the appellant has preferred his representation but the same was filed by the Appellate Authority.
- Para. 5. Since the appointments were made in violations of rules without observing codal formalities, hence, appellant was terminated on the grounds mentioned above and there was no need to inform the appellant regarding rejection of his departmental appeal.
- Para. 10. Incorrect, vehemently denied. The appellant has no legal or vested right to invoke the jurisdiction of Service Tribunal.

GROUNDS.

- Para. A. Incorrect, perversely denied. The acts and deeds of the Respondents in the vast interest of the general public are just, legal and covered with the rules and policies given by the Government and could not be violated any of the rules or policies for the interest of an individual.
- Para. B. Incorrect, vigorously denied. The appellant remained absent from his duties after his appointment. The appellant possess the domicile of District D.I.Khan which shows that he has no interest in the service at Tank.
- Para.C. Incorrect, intensively denied. The appellant was terminated after completing all the codal formalities in letter and spirit according to rules and existing policies.
- Para. D. Incorrect forcibly denied. The referred judgment is not related to the case of the appellant.
- Para. E. Incorrect, fervently denied. The detailed reply has already been given in the paras supra.
- Para. F. Incorrect, vehemently denied. The termination order was issued in accordance with law and rules and the petitioner has not been discriminated at all.

PRAYER

It is, therefore, most humbly prayed that on acceptance of this Para-wise comments, the appeal being devoid of legal footings and merit may graciously be dismissed with cost.

Secretary to

Director General Health Services

Government of Khyber PakhtunKhawa Health Department Peshawar

Respondent No 1& 2

Khyber PakhtunKhawa Peshawar

Respondent No

(District Health Officer)

Respondent No 5

GOVERNMENT OF N.W.F.P. HEALTH DEPARTMENT.

No.SOB.HD. 1-1, 2006-07, PHSA Dated Peshawar the 12th May, 2007

To.

- 1. The Director General Health Services, NWFP, Peshawar,
- 2. All Executive District Officer, Health, NWFP.,
- 3. All Medical Superintendent, DEQ Hospital in NWEP.
- 4. The Director Health Services, FATA, NWFP,
- 5. All Executive District Officer. Finance in NWF

IMPLEMENTATION OF PARAMEDICS SERVICE STRUCTURE.

Dear Sir.

I am directed to refer to the subject noted above and to forward herewith a copy of letter No. 149 PHSA HRD PSS 2006-07.9198 dated 7.5.2007 alongwith copies of the code of different categories of staff allotted by Finance Department implementation of revised Eight Stage Paramedics Services Structure of NWFP. CAUSOS OF CASCAL

It is therefore requested that implement the new code allotted by Finance Department during the current financial year 2006-07 for reflection in the Budget Book for the year 2007-08 at District level.

Encl. As above.

Yours faithfully.

(KHAN ZALI) SECTION OFFICER (BUDC

Endst: of even number & dates-

Copy forwarded to the:

1. Budget Officer-Vi. Finance Department, Govt. of NWFP, Peshawar,

2. Director, Provincial Health Services Academy, NWFP, Peshawar with the request to persue the case with all of the above quarter under intimation to Health Department.

SECTION OFFICER (BUDGET)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIEUNAL PESHAWAR

Appeal No. 957of 2015 .

Muzamil HussainS/o Mohammad Jehangir R/o Jabbar Wala, Tehsil & District
Dera Ismail Khan

(Appellant)

7		
_	Xist	ing Designation
	Code	Designation
	Distr	ict Health Services (Malaria)
	Code	Name of post
į	A116	Assistant Malaria Superintenden
-	M051	Microscopist
, , , , , , , , , , , , , , , , , , ,	1008	Insect Collector
_ ⊢	M004	Malaria Inspector
[1	M006	Malaria Supervisor
I	<u>Distri</u>	ct Health Services Tank
C	2233	CDC Supervisor
S	012	Sanitary Supervisor
7	chsil	Head Quarter Hospital Tank
IB	035	Blood Bank Technician
·	019	Dental Technician
	020	Head Dispenser
	042	Anaesthesia Assistant
<u> C</u>	179	Co:npounder
0.0	78	Dispenser
	i	
00		Operation Theatre Assistant
P.0	02]	Cadiographer
L00)	Laboratory Assistant

Rural Health Centre Tank

Health Technician

Dental Technician Health Technician

Lady Health Visitor

Laboratory Assistant

Compounder

H048

D019

11048

L012

C079

L001

11. That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

RESPECTFULLY SHEWETH

ON FACTS.

- Para.1. This Para is pertained to record, hence, no comments.
- Para. 2. This Para is also pertained to record, hence, no comments.
- Para. 3. This Para is correct to the extent that the services of the appellant were terminated on the grounds that the neither advertisement was made nor proper selection committee was constituted. Further, the appellant is the resident of Dera Ismail Khan and remained absent after his appointment. Similarly, the Government has not formulated new criteria for the post of Insect Collector. (Notification attached)
- Para. 4. This Para is correct to the extent that the appellant has preferred his representation but the same was filed by the Appellate Authority.
- Para 5. Since the appointments were made in violations of rules without observing codal formalities, hence, appellant was terminated on the grounds mentioned above and there was no need to inform the appellant regarding rejection of his departmental appeal.
- Para. 10. Incorrect, vehemently denied. The appellant has no legal or vested right to invoke the jurisdiction of Service Tribunal.

GROUNDS.

- Para. A. Incorrect, perversely denied. The acts and deeds of the Respondents in the vast interest of the general public are just, regal and covered with the rules and policies given by the Government and could not be violated any of the rules or policies for the interest of an individual.
- Para. B. Incorrect, vigorously denied. The appellant remained absent from his duties after his appointment. The appellant possess the domicile of District D.I.Khan which shows that he has no interest in the service at Tank.
- Para.C. Incorrect, intensively denied. The appellant was terminated after completing all the codal formalities in letter and spirit according to rules and existing policies.
- Para. D. Incorrect forcibly denied. The referred judgment is not related to the case of the appellant.
- Para. E. Incorrect, fervently denied. The detailed reply has already been given in the paras supra.
- Para. F. Incorrect, vehemently denied. The termination order was issued in accordance with law and rules and the petitioner has not been discriminated at all.

<u>PRAYER</u>

It is, therefore, most humbly prayed that on acceptance of this Para-wise comments, the appeal being devoid of legal footings and merit may graciously be dismissed with cost.

Secretary to

Director General Health Services

Government of Khyber PakhtunKhawa Health Department Peshawar

Respondent No.1&2

Khyber PakhtunKhawa Peshawar

Respondent No 27

(District Health Officer)

Tank
Respondent No 5

GOVERNMENT OF N. W.F.P. HEALTH DEPARTMENT

No.SOB.HD. 1-1, 2006-07, PHSA Dated Peshawar the 2th May, 2007

1. The Director General Health Services, NWFP, Peshawar,

2. All Executive District Officer, Health, NWFP.,

. 3. All Medical Superintendent, DHQ Hospital in NWFP.

4. The Director Health Services, FATA, NWFP

5. All Executive District Officer. Finance in NWFP.

IMPLEMENTATION OF PARAMEDICS SERVICE STRUCTURE

Dear Sir.

I am directed to refer to the subject noted above and to forward herewith a copy of letter No. 149 PHSA HRD PSS 2006-07.9198 dated 7.5.2007 alongwith copies of the code of different categories of staff allowed by Finance Department implementation of revised Eight Stage Paramedies Services Structure of NWFP. "我们是"这种X农区公司。

It is therefore requested that; implement the new code allotted by Finance Department during the current financial year 2006-07 for reflectica in the Budget Book for the year 2007-08 at District level.

Encl: As above

Yours faithfully,

(KHAN ZALI) SECTION OFFICER (BUDG

Endst: of even number & date:

Copy forwarded to the:

1. Budget Officer-VI. Finance Department, Govt. of NWFP, Peshawar. Director, Provincial Health Services Academy, NWFP, Peshawar with the request to persue the case with all of the above quarter under intimation to Health Department,

SECTION CFFICER (BUDGET)

Code Designation	BPS	Posts		Designation Designation		
District Health Services (Malaria) Tank	·	1 - 2.51.3	1000	резівнанов	BPS	Posts
Code Name of post	BPS	2005-06	 	None		12 0313
A116 Assistant Malaria Superintendent	8	1	J066	Name of post	BPS	2005-06
M051 Microscopist	6	2		Junior Primary Health Care Technician (Multi Purpose)	9	1
I008 Insect Collector	5	 	1066	Pathol Chilical Technician (Pathology)	9	2
M004 Malaria Inspector	5	2	J066	Junior Primary Health Care Technician (Multi Purpose)	1.9	
M006 Malaria Supervisor		7	_2000 1	Juliof Frimary Health Care Technicia- (A. L. D.		1
		13	- 756	anior Frimary Ficalth Care Technician (Multi Purpose)	9	2
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S012 Sanitary Supervisor		<u>i</u> <u>l</u>	P249 I	Primary Health Care Technician (Multi Purpose)		
		<u></u>	P249 I	Primary Health Care Technician (Multi Purpose)	12	
Tehsil Head Quarter Hospital Tank		`2 .		Total	[12]	1
Blood Bank Technician		·				2
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	8	-1 (319 C	linical Technologist (Pharmacy)	. 9	
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	Ti-		73 11	inical Technician (Pharmacy)	12	3
011 Operation Theatre Assistant	6		72 Jan	nior Chinical Technician (Pharmacy)	9	2
02 Radiographer	·}	$\frac{1}{2}$ $\frac{1}{30}$	70 1	nical Technician (Surgical)	1 12	-
01 Laboratory Assistant	 	3. 100	(0 JUF	nor Clinical Technician (Radiology)	1 9	2
	1 - 1 - 1		ov Innu	ior Clinical Technician (Pathology)	-9	
ral Health Centre Tank				Total.		$\frac{3}{18}$
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Laboratory Assistant	6 13	.1073	Junio	r Clinical Technician (Pharmacy)	12 1]
Amountain's Assistant	5- 3	· J067	Junior	r. Clinical Technician (Pathology)	9 3	
	21	C306	Clinic	al Technician (Pathology)	9 2	

BEFORE THE HONOURABLE SEREVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 957/2015

Muzamil Hussain

<u>Versus</u>

Govt. of Khyber Pakhtunkhwa and others

RESPONDENT NO. 1 to 5

Respectfully Sheweth:-

Reply on Preliminary Objections:-

- i. Incorrect and misconceived. Service appeal of the appellant is maintainable and competent in the eye of law.
- ii. Incorrect. Appellant come to the court with clean hands.
- iii. Incorrect. The appellant has got clear cause of action and locus standi against the respondents.
- iv. Incorrect.
- v. Incorrect.
- vi. Incorrect. Appellant's appeal is well within time.
- vii. Incorrect. Honourable Tribunal has got vast and ample powers to adjudicate upon the matter in issue.
- viii. Incorrect and misconceived.
- ix. Incorrect and misconceived. Appeal of the appellant is prima facie against the respondents' act of illegal termination.
- x. Incorrect and misconceived. Appellant come to the court for the redressal of his genuine grievance under the law.
- xi. Incorrect and misconceived.

Objections on Facts:-

1) Admitted by respondents, appellant was appointed as Junior PHC Technician MP (BPS-09) vide order dated 25/04/2013 by the competent authority and after that submitted arrival report and



medical certificate and joined the service according to the wishes of competent authority.

- 2) Admitted by respondents. The appellant was legally posted at BHU Cheena by the competent authority it shows his genuine service and frequent orders by the competent authority.
- 3) Admitted hence, no reply. The appellant services continued till 2015 and firstly stopped the salaries of the appellant and after that without any justification terminated the appellant by the respondents. Appellant performed his duties and made his attendance regularly. Copies of attendance register are enclosed herewith. Moreover, objection regarding advertisement and selection committee is baseless because appellant is not responsible for the same irregularities conducted by the competent authority. In this Superior Epics court of the country are very much evident that instead of removing such petty employees from service, action should be taken against the authority who has mis-exercised its powers. Notification annexed with reply is in favour of appellant.
- 4) Admitted. Hence no reply.
- 5) Incorrect and misconceived. Appellant is appointed against the clear vacant post and regularly made his attendance against the post, in this respect attendance register is very much clear. By saying that there is no need to inform the appellant regarding rejection of his departmental appeal shows the high handedness and violation of rules by the respondents.
- 6) Incorrect and misconceived. Appellant has legal and vested right to approach the learned Tribunal.

OBJECTION ON GROUNDS:

- a) Incorrect and misconceived. The respondents are duty bound to issue show cause notice, charge report before taking any perverse action against the appellant which is fundamental basic right of the every employee of the department but non-giving a chance of defense is illegal.
- b) Incorrect, hence not admitted. Appellant has never been remained absent from duty in this respect attendance register is the strong proof which is already enclosed.
- c) Incorrect and misconceived. Appellant has not provided chance of personal hearing, show cause notice, charge report before taking perverse action which is against law.
- d) Incorrect and misconceived.
- e) No reply.

The

Incorrect and misconceived. Termination order is against law, rules, regulations of service, hence, liable to be set aside by this honourable Tribunal.

In wake of submissions made above, it is therefore, humbly requested that written reply of the respondent No. 1 to 5 declared baseless and appeal of the appellant may please be accepted as prayed for. Any other relief deems appropriate may please be given to the appellant.

Dated: 22/02/2017

Yours Humble Petitioner

Muzamil Hussain

Through Counsel

Muhammad Waqar Alam 242
Advocate High Court

AFFIDAVIT

I, Muhammad Waqar Alam Advocate High Court counsel of the petitioners, under the instructions of my client, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Hon'ble Court.

Dated: 22/02/2017

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BEFORE THE HONOURABLE SEREVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 957/2015

Muzamil Hussain

<u>Versus</u>

Govt. of Khyber Pakhtunkhwa and others

RESPONDENT NO. 1 to 5

Respectfully Sheweth:-

Reply on Preliminary Objections:-

- i. Incorrect and misconceived. Service appeal of the appellant is maintainable and competent in the eye of law.
- ii. Incorrect. Appellant come to the court with clean hands.
- iii. Incorrect. The appellant has got clear cause of action and locus standi against the respondents.
- iv. Incorrect.
- v. Incorrect.
- vi. Incorrect. Appellant's appeal is well within time.
- vii. Incorrect. Honourable Tribunal has got vast and ample powers to adjudicate upon the matter in issue.
- viii. Incorrect and misconceived.
- ix. Incorrect and misconceived. Appeal of the appellant is prima facie against the respondents' act of illegal termination.
- x. Incorrect and misconceived. Appellant come to the court for the redressal of his genuine grievance under the law.
- xi. Incorrect and misconceived.

Obsections on Facts:-

1) Admitted by respondents, appellant was appointed as Junior PHC Technician MP (BPS-09) vide order dated 25/04/2013 by the competent authority and after that submitted arrival report and



medical certificate and joined the service according to the wishes of competent authority.

- 2) Admitted by respondents. The appellant was legally posted at BHU Cheena by the competent authority it shows his genuine service and frequent orders by the competent authority.
- 3) Admitted hence, no reply. The appellant services continued till 2015 and firstly stopped the salaries of the appellant and after that without any justification terminated the appellant by the respondents. Appellant performed his duties and made his attendance regularly. Copies of attendance register are enclosed herewith. Moreover, objection regarding advertisement and selection committee is baseless because appellant is not responsible for the same irregularities conducted by the competent authority. In this Superior Epics court of the country are very much evident that instead of removing such petty employees from service, action should be taken against the authority who has mis-exercised its powers. Notification annexed with reply is in favour of appellant.
- 4) Admitted. Hence no reply.
- 5) Incorrect and misconceived. Appellant is appointed against the clear vacant post and regularly made his attendance against the post, in this respect attendance register is very much clear. By saying that there is no need to inform the appellant regarding rejection of his departmental appeal shows the high handedness and violation of rules by the respondents.
- 6) Incorrect and misconceived. Appellant has legal and vested right to approach the learned Tribunal.

OBJECTION ON GROUNDS:

- a) Incorrect and misconceived. The respondents are duty bound to issue show cause notice, charge report before taking any perverse action against the appellant which is fundamental basic right of the every employee of the department but non-giving a chance of defense is illegal.
- b) Incorrect, hence not admitted. Appellant has never been remained absent from duty in this respect attendance register is the strong proof which is already enclosed.
- c) Incorrect and misconceived. Appellant has not provided chance of personal hearing, show cause notice, charge report before taking perverse action which is against law.
- d) Incorrect and misconceived.
- e) No reply.

The

f) Incorrect and misconceived. Termination order is against law, rules, regulations of service, hence, liable to be set aside by this honourable Tribunal.

In wake of submissions made above, it is therefore, humbly requested that written reply of the respondent No. 1 to 5 declared baseless and appeal of the appellant may please be accepted as prayed for. Any other relief deems appropriate may please be given to the appellant.

Dated: 22/02/2017

Yours Humble Petitioner

Muzamil Hussain

Through Counsel.

Muhammad Waqar Alam Advocate High Court

AFFIDAVIT

I, Muhammad Waqar Alam Advocate High Court counsel of the petitioners, under the instructions of my client, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Hon'ble Court.

Dated: 22/02/2017

Deponent 22

Inqueller

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 432 /ST

Dated 1/03/2018

To

The District Health Officer (DHO), Government of Khyber Pakhtunkhwa, Tank.

Subject:

ORDER/JUDGEMENT IN APPEAL NO. 957/2015, MR. MUZAMIL HUSSAIN.

I am directed to forward herewith a certified copy of Judgment/Order dated 19/02/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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