

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: right;">24.10.2017</p>		<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>CAMP COURT, D.I.KHAN</u> Appeal No. 1188/2014</p> <p style="text-align: center;">Date of Institution ... 25.09.2014 Date of Decision ... 24.10.2017</p> <p style="text-align: center;">Dr. Abdur Rehman, Ex-Assistan Professor (Orthopedic), Gomal Medical College D.I.Khan APPELLANT</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secreteriate Peshawar. 2. The Secretary, Health Department, Government of Khyber Pakhtunkhwa, Civil Secreteriate Peshawar. 3. The Director General, Health Services, Khyber Pakhtunkwa, Peshawar. 4. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, Civil Secreteriate Peshawar. <p style="text-align: center;">RESPONDENTS</p> <p><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID, MUGHAL, MEMBER: -</u></p> <p>Appellant, learned counsel for the appellant and Mr. Farhaj Sikandar, District Attorney on behalf of the respondents present.</p> <p>2. The appellant has filed the present appeal against the respondents and made impugned the order dated</p>

30.04.2014 whereby the appellant was removed from service on the ground of absence from duty..

3. Learned counsel for the appellant argued that the appellant joined the health department in (BS-17) on 10.12.1991 and then opted for retirement on completion of twenty (20) years service; that as the appellant had opted for retirement, he had not kept continued his service and remained absent from his duty. Further argued that absence notices were issued to the appellant and vide impugned order dated 30.04.2014 the appellant was removed from service. Further argued that notices including notices through publication in the news papers were not issued by the competent authority hence the impugned order is not maintainable in the eyes of law and liable to be struck down.


4. As against that learned District Attorney while opposing the present appeal argued that the appellant remained willfully absent without any permission hence was rightly removed from service.

5. Argument heard. File perused.

6. In the present case the appellant was removed from service upon issuance of notices including notices through

publication in the newspapers, however admittedly the notices were not issued by the competent authority hence the impugned order is not found tenable in the eyes of law. Consequently the impugned order is set aside and the appellant is reinstated in service. Absence period and intervening period shall be treated as leave without pay. The respondent department is at liberty to conduct denovo proceedings against the appellant as per law.

Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



(MUHAMMAD HAMID MUGHAL)
MEMBER

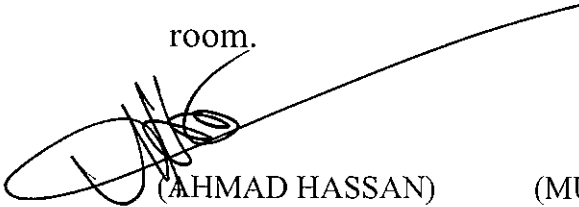
ANNOUNCED


24.10.2017

24.10.2017

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present.

Vide our separate judgment of today placed on file, the impugned order is set aside and the appellant is reinstated in service. Absence period and intervening period shall be treated as leave without pay. The respondent department is at liberty to conduct denovo proceedings against the appellant as per law. Parties are left to bear their own costs. File be consigned to the record room.

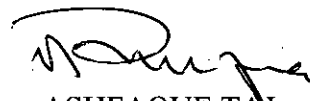

(AHMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
24.10.2017

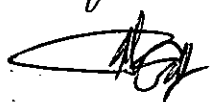
27.12.2016

Muhammad Arif, on behalf of the appellant and Mr. Farhaj Sikandar, Government Pleader for the respondents present. Rejoinder on behalf of the appellant submitted copy whereof also handed over to learned GP. To come up for arguments on 27.03.2017 before D.B at Camp Court D.I.Khan.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

27-3-17

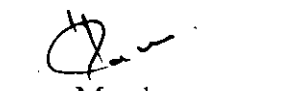
*since law is hereby cancelled.
therefore the case is adjourned for some
on 25-3-2017.*



25.09.2017


Appellant in person and Mr. Farhaj Sikandar, District Attorney for the respondents present. Appellant seeks adjournments as his counsel is not available. Adjourned. To come up for arguments on 25/10/2017 before DB at Camp Court D.I.Khan.


Member
(Executive)


Member
(Judicial)
Camp Court D.I.Khan

26.01.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP for the respondents present. The learned GP requested for time to contact the respondents. To come up for written reply on 24.5.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

24.05.2016

Counsel for the appellant and Mr. Qaisar Nadeem, DPE alongwith Mr. Farhaj Sikandar, GP for respondents present. Representative of the respondents requested for time to file written reply. To come up for written reply on 30.08.2016 at camp court D.I. Khan.


Member
Camp Court D.I.Khan

30.08.2016

Muhammad Arif, on behalf of the appellant and Mr. Muhammad Tufail Khattak, SO(Lit-II) alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply submitted. To come up for rejoinder on 27.12.2016 at camp court D.I Khan.


Member
Camp court D.I. Khan

27.07.2015

Appellant with counsel and Mr. Farhaj Sikandar, GP with Qaiser Nadeem, DPE for respondents No. 1 to 4 present and requested for further time. None is available on behalf of respondent No. 5. Fresh notice be issued to him. Case to come up for written reply positively on 28-09-2015 at camp court, D.I.Khan.



MEMBER
Camp court, D.I.Khan

28.09.2015

Clerk of counsel for the appellant and Mr. Farhaj Sikandar, GP present. Fresh notices be issued to respondents. Case to come up for written reply without fail on 24-11-15 at camp court, D.I.Khan.



MEMBER
Camp court, D.I.Khan

24.11.2015

Appellant in person and Mr. Farhaj Sikandar, GP with Qaiser Nadeem, DPE for the respondents present and requested for further time. Last opportunity is given to the respondents. To come up for written reply on 26-1-16 at camp court, D.I.Khan.



MEMBER
Camp Court, D.I.Khan

13.04.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving in the Health Department and after completion of 20 years service he opted for retirement under section 13 of the KPK Civil Servants, 1973 which application was turned down and regarding which appellant has preferred service appeal No. 388/12 which is sub-judice before this Tribunal. That thereafter the appellant was removed from service vide impugned order dated 30.4.2014 communicated to the appellant on 19.5.2014 and period of absence was treated as leave without pay. That the appellant preferred departmental appeal against the said order on 2.6.2014 which remained un-responded and hence the instant service appeal on 25.9.2014.

Appellant Deposited
Security & Process Fee




That the impugned order of removal is against facts and law as the appellant was entitled to exercise option of retirement after completing 20 years service.

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 for 25.5.2015 before S.B. The appeal pertains to territorial limits of D.I.Khan Division and as such to be heard at camp court D.I.Khan.


Chairman

25.05.2015

Appellant in person and Mr. Farhaj Sikandar, GP with Yar Gul, Assistant and Nughman, Senior Clerk for the respondents present. Reply not submitted. To come for written reply on 27.7.2015 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

31.10.2014

Counsel for the appellant present. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the respondents to submit complete record of the appellant and to AAG/GP to assist the Tribunal. To come up for preliminary hearing on 06.01.2015.



Member

Reader Note:

06.01.2015

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Asst. Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned 09.03.2015 for the same.


Reader

09.03.2015



Counsel for the appellant is not in attendance due to funeral ceremony of one of his relative. Adjourned to 13.04.2015 for preliminary hearing before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1188 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/09/2014	<p>The appeal of Dr. Abdur Rehman presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	25-9-2014.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>31-10-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Appeal No. 1188 /2014

Dr. Abdur Rehman


V/S Health Department, KPK

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Service Certificate	- A -	05
3.	Copy of Notification (24.5.2005)	- B -	06
4.	Copy of Option letter (17.5.2011)	- C -	07
5.	Copy of Order dated 29.11.2011	- D -	08
6.	Copy of Order dated 13.2.2012	- E -	09
7.	Copy of Memo of Appeal No.388/12	- F -	10-13
8.	Copy of Absence Notice (8.10.13)	- G -	14
9.	Copy of Absence from Duty	H	15
10.	Copy of Absence from Duty	I	16
11.	Copy of Publication in Newspaper	J	17
12.	Copy of Notification (30.4.2014)	K	18
13.	Copy of Representation	L	19-20
14.	Vakalat Nama	-----	21

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND


(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Appeal No. 1188 /2014

G.W.P. Peshawar
25/9/2014

Dr. Abdur Rehman, Ex-Assistant Professor (Orthopedic),
Gomal Medical College, DI Khan.

APPELLANT

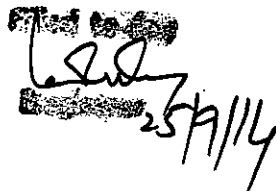
VERSUS

1. The Government of KPK through the Chief ^{secy.} Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Health Department, Government of KPK, Civil Secretariat, Peshawar.
4. The Director General, Health Services, KPK, Peshawar.
5. The Secretary, Finance Department, Government of KPK, Civil Secretariat, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE REMOVAL FROM SERVICE ORDER DATED 30.04.2014 RECEIVED BY APPELLANT ON 19.5.2014 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE AND AGAINST NOT TAKING ANY ACTION ON THE APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.


25/9/14

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 30.4.2014 RECEIVED BY THE APPELLANT ON 19.5.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL

BACK AND CONSEQUENTIAL BENEFITS OR THE APPELLANT MAY BE AWARDED FULL PENSIONARY BENEFITS FOR HIS 20 YEARS SERVICE IN LIGHT OF GOVERNMENT NOTIFICATION DATED 24.5.2005 AND OPTION GIVEN BY THE APPELLANT. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND NOT SPECIFICALLY PRAYED FOR, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant joined the Health Department in BPS-17 on 10.12.1991 and with the passage of time, the appellant was promoted to BPS-18 by the competent authority. The appellant completed his 20 years service on 9.12.2011 which is evident from the service certificate. Copy of Service Certificate is attached as Annexure-A.
2. That the appellant in light of the Government Notification dated 24.5.2005 in which the qualifying service for retirement has been ^{decreased} 25 years to 20 year and on the basis of that, the appellant opted for retirement on completion of 20 years service through proper channel but the same application was turned down on 29.11.2011 against which the appellant filed representation and the same was rejected on 13.2.2012. The appellant against that order had already filed Appeal No.388/2012 in this august Tribunal which is still pending. Copies of Notification, Option letter, order dated 29.11.2011, order dated 13.2.2012 and Memo of Appeal No.388/2012 are attached as Annexure-B, C, D, E and F respectively.
3. That as the appellant had opted for retirement, therefore, the appellant had not kept continue his service and absent from duty, therefore, absence notice was issued to the appellant along-with publication in the newspaper. Copies of which are attached as Annexure-D, H, I and J.
4. That vide Notification dated 30.4.2014 which was received to the appellant on 19.5.2014, the appellant was removed from service in-violation of law and

rules, against which the appellant submitted representation on 2.6.2014 and waited for statutory period but no reply received by the appellant so far. Hence, the present appeal on the following grounds amongst the others. Copy of Notification dated 30.04.2014 and Representation are attached as Annexure- K and L.

GROUND:

- A) That the order dated 30.4.2014 and not taking any action on the departmental appeal of the appellant is against the law, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard as neither show cause notice was service on appellant nor provided any chance of personal hearing, therefore, the impugned removal from service order is not tenable in the eyes of law.
- C) That action against the appellant has been passed on malaise to deprive him from the benefits of retirement which is provided in the law and for which the appellant had also opted.
- D) That even the respondents have violated the E&D Rules 2011 while issuing publication in the daily newspaper regarding the absence of appellant.
- E) That the appellant was in BPS-18 and for him the competent authority is Chief Minister but the impugned order was passed by the Secretary of the Department (Respondent No.3) who was not competent authority for the appellant, nor the law vest any power to him to remove the scale-18 and above officer from service.
- F) That as the appellant has already opted for retirement benefit on 20 years service for which he

legally entitled, therefore, in such situation, the removal from service order is bad in the eyes of law and norms of justice.

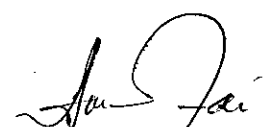
- G) That the appellant has not been treated according to law and rules.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT


Dr. Abdur Rehman

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND

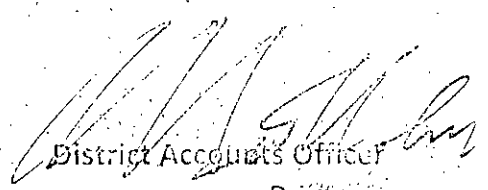

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

A
5

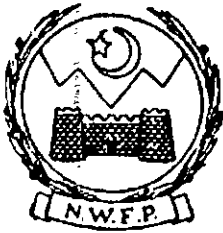
OFFICE OF THE DISTRICT ACCOUNTS OFFICER DERA ISMAIL KHAN

QUALIFYING SERVICE CERTIFICATE

Certified that Dr. Abdur Rehman S/o Mufti Abdul Latif Assistant Professor, Gomal Medical College D.I. Khan will gain 20 years qualifying service on 09-12-2011 as he joined the service on 10-12-1991


District Accounts Officer
D.I. KHAN

ATTESTED

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

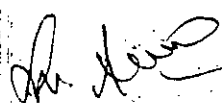
No.SO(O&M)E&AD/5-11/2004
Dated Peshawar, the May 24, 2005

To

1. All Administrative Secretaries, NWFP.
2. Secretary to Governor, NWFP.
3. Secretary to Chief Minister, NWFP.
4. All Head of Attached Department in NWFP.
5. Director Information NWFP, Peshawar.
6. All District Coordination Officers/Political Agents in NWFP.
7. Accountant General, NWFP.
8. Registrar, Peshawar High Court, Peshawar.
9. Registrar, Services Tribunal NWFP, Peshawar.
10. Secretary, Public Service Commission NWFP, Peshawar.
11. Private Secretary to Governor, NWFP.
12. Private Secretary to Chief Minister, NWFP.
13. All P.Ss to Provincial Ministers/Advisors, NWFP.
14. Controller, Government Printing Press Peshawar.

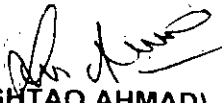
SUBJECT: UPDATED COPY OF THE NWFP CIVIL SERVANTS ACT 1973--
CORRIGENDUM.

I am directed to refer to the subject noted above and to state that in Clause (a) of Sub-Section (1) of Section-13 of the NWFP Civil Servants Act, 1973, the words "twenty five years" may be corrected as "twenty years", in the booklet of Civil Servants Act, 1973, circulated vide this Department letter of even number dated May 19, 2005 duly amended upto November 30th 2004.


(MUSHTAQ AHMAD)
SECTION OFFICER (O&M)

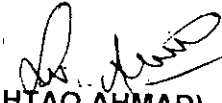
ENDST: NO & DATE EVEN

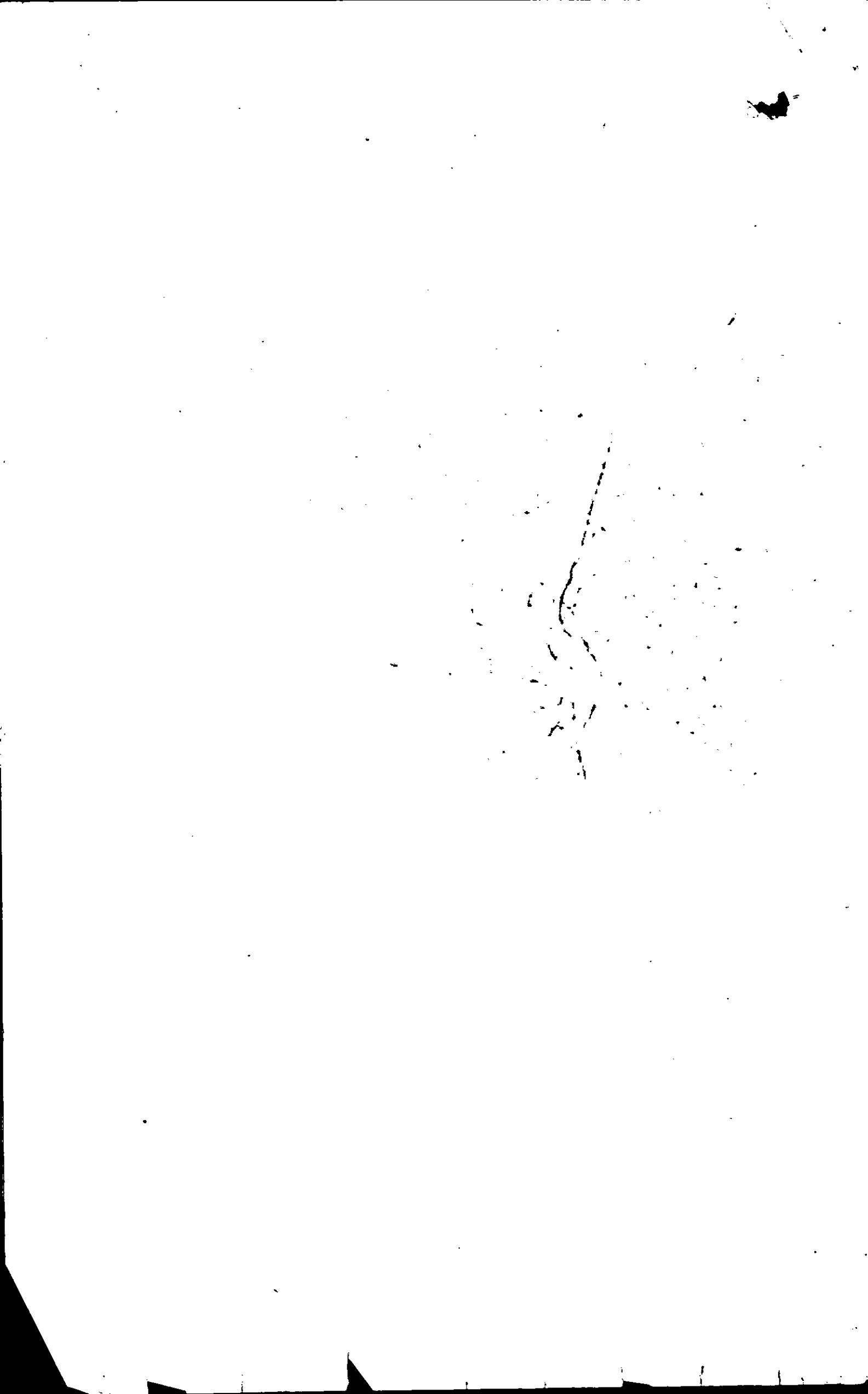
Copy is forwarded to all the Officers in E&A Department.

ATTESTED

(MUSHTAQ AHMAD)
SECTION OFFICER (O&M)

ENDST: NO & DATE EVEN

Copy forwarded to the Librarian, E&A Department. He is requested to kindly make necessary corrections before issuance of booklets.


(MUSHTAQ AHMAD)
SECTION OFFICER (O&M)



Secretary to Government of Khyber Pukhtunkhwah,
Health Department,
Peshawar

Subject: Request for Optional Retirement on attaining Qualifying Service of 20 Years

Through: Proper channel.

Respected Sir,

I have the honor to refer to Section 13 of the Khyber Pukhtunkhwah Civil Servants Act 1973, which reads as under:-

Retirement from Service. (1) A civil servant shall retire from service:- (a) on such date after he has completed twenty-five years of service qualifying for pension or other retirement benefits as the competent authority may, in public interest, direct; or (b) where no direction is given under clause (a); on the completion of sixtieth year of his age (copy attached).

Further I would draw your attention Sir, to the Government of Khyber Pukhtunkhwah Establishment & Administration Department (Regulation Wing) Notification.No. 50 (O&M) F&AD/5-11/2005, dated Peshawar, the May 24, 2005, on the Subject: UPGRADED COPY OF THE KHYBER PUKHTUNKHWAH CIVIL SERVANTS ACT 1973: CORRIGENDUM, whereby the words "Twenty five years" are replaced by "Twenty years" (copy attached).

Hence the length of qualifying service for optional retirement under Khyber Pukhtunkhwah Civil Servants Act 1973, Section 13 has been reduced from 25 years to 20 years.

I have joined my service from 10-12-1991. In this way, my qualifying of 20 years for optional retirement will complete on 10-12-2011.

I have some unavoidable family problems and I feel it difficult to continue my service further more smoothly. In the light of the above said amendment in the Khyber Pukhtunkhwah Civil Servants Act 1973, Section 13; I would request your honor to kindly grant approval for my Optional Retirement w.e.f. 11-12-2011.

Waiting for a favorable response

Dated 17-5-2011

Attached - Two

Abdur Rahman

Dr. Abdur Rahman
Assistant Professor Orthopedics
Gomal Medical College, D.I.Khan

ATTESIED
A





GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH-I/HD/1-447/98
DATED PESH: THE 29TH Nov; 2011

D 8

To

The Principal,
Gomal Medical College,
D.I. Khan.

13441
08-12-2011

SUBJECT:- REQUEST FOR OPTIONAL RETIREMENT ON ATTAINING QUALIFYING SERVICE OF 20 YEARS

I am directed to refer to your letter No.4333-34/Estt/PF dated 17/11/2011 on the above subject and to state request of the doctor for premature retirement on 20 years age is not covered under the rules.

(Hamid Ali)
Section Officer-I

ATTEST

Multiple faint, overlapping stamps and signatures, likely from various departments or offices, including a circular stamp dated 29 DEC 2011.

230 PM
29 DEC 2011

ESIM
25/11/11



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH-I/HD/3-1447/05
DATED PESHAWAR THE 13TH FEB, 2012

E (9)

To

The Principal,
Gomal Medical College,
D.I.Khan.

SUBJECT: REQUEST FOR OPTIONAL RETIREMENT ON ATTAINING
QUALIFYING SERVICE OF 20 YEARS

I am directed to refer to your letter No.4333-34/Estt/PF dated 17/11/2011 on the above subject and to state that Health Department regret its inability to accede to the request of Dr. Abdur Rehman, Assistant Professor Orthopaedic for premature retirement on completion of 20 years service as the same does not apply in normal/routine cases.

(Hamid Ali)
Section Officer-I

Endst No and date even

Dr. Abdur Rehman, Assistant Professor Orthopaedic, Gomal Medical College, D.I.Khan for information.

(A. J. P. Khan)
Section Officer-I

20/2/12

ATTESTED
[Signature]

194/
20.02.2012

F
10

BEFORE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No: 338 of 2012

Dr. Abdur Rahman son of Mufti Abdul Latif Caste Marwat Assistant
Professor Orthopedic, Gomal Medical College Dera Ismail Khan

[Appellant]

VERSUS

1. Govt: of Khyber Pakhtunkhwa Peshawar through Secretary Health, Peshawar
2. Secretary, Govt: of Khyber Pakhtunkhwa Health Department Peshawar
3. Secretary, Govt: of Khyber Pakhtunkhwa Establishment and Administration Department Peshawar
4. Director General Health Services, Peshawar
5. Principal Gomal Medical College, Dera Ismail Khan
6. Accountant General, Khyber Pakhtunkhwa Peshawar
7. District Comptroller of Accounts, Dera Ismail Khan

ATTESTED

[Respondents]

APPEAL AGAINST THE ORDERS DATED
29.11.2011 WHEREBY REQUEST OF THE
APPELLANT FOR PREMATURE RETIREMENT ON
COMPLETION OF 20 YEARS QUALIFYING

Adv

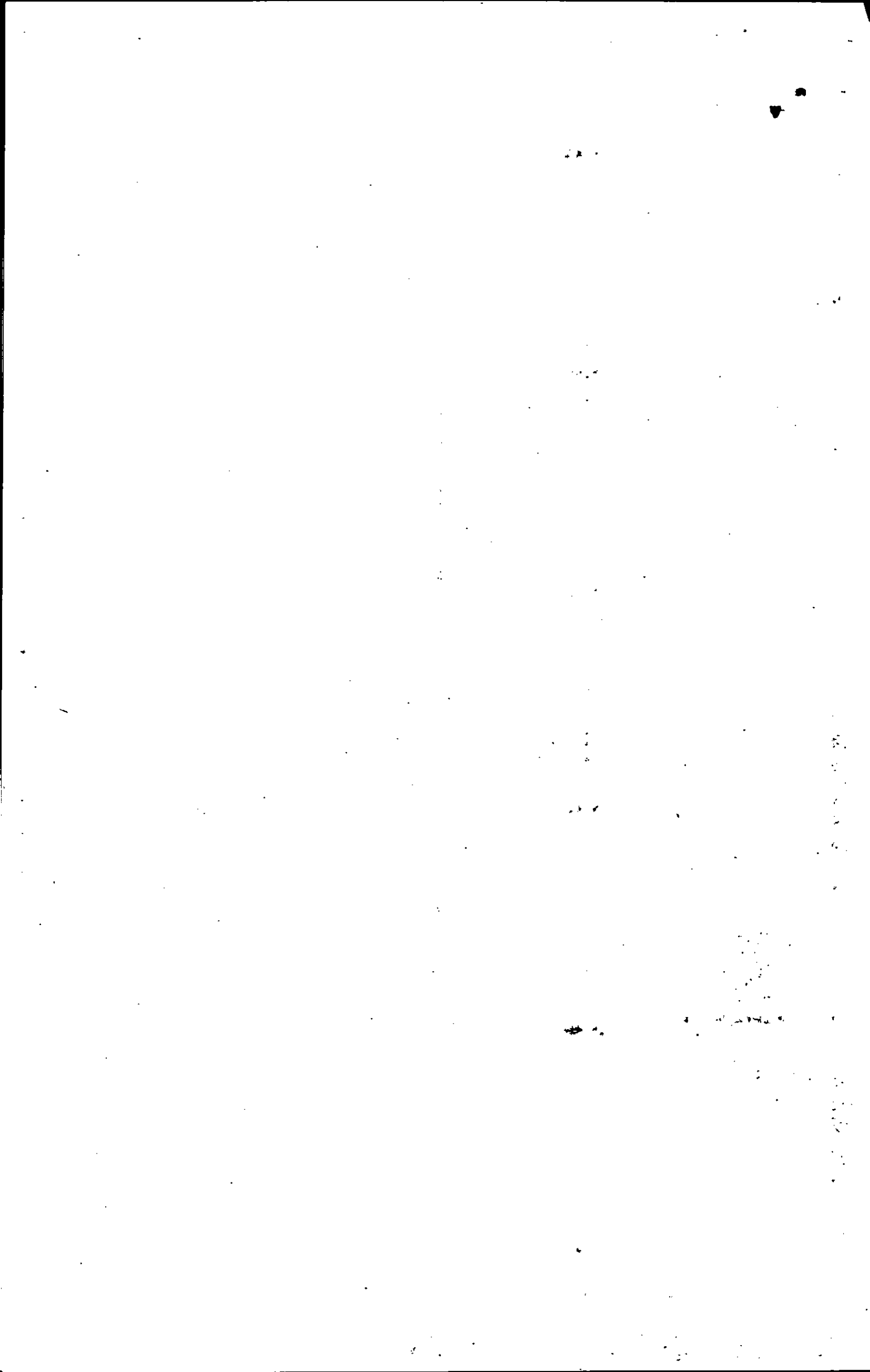
SERVICE WAS DECLINED AND ORDERS DATED
13.02.2012 WHEREBY DEPARTMENTAL APPEAL
OF THE APPELLANT WAS DISMISSED

Respectfully Sheweth:

1. Appellant was appointed as Medical officer (BS-17) on the recommendations of NWFP Public Service Commission on 09.12.1991. Appellant joined the department on 10.12.1991. Appellant completed 20 years of qualifying service on 10.12.2011. Service certificate issued by District Comptroller of Accounts Dera Ismail Khan is enclosed as Annexure A.
2. Due to domestic and family problems, Appellant could not continue his service. Therefore, appellant applied for premature retirement on the completion of 20 years qualifying service in the light of letter issued by respondent No: 3 dated 24.05.2005, copy enclosed as Annexure B whereas Annexure C is the copy of notification.
3. Appellant's request was turn down without affording any chance of personal hearing; on 29.11.2011 communicated to appellant on 14.12.2011; copy Annexure D.

Handwritten signature and initials: Adw

ATTEST:
A



4. Appellant filed departmental appeal/representation on 12.01.2012, which also met the same fate. Copy of departmental appeal and impugned order is enclosed as Annexure E & F respectively.

5. Appellant has left with no option but to knock the door of this Hon'ble Tribunal in appeal on the following grounds, inter alia:

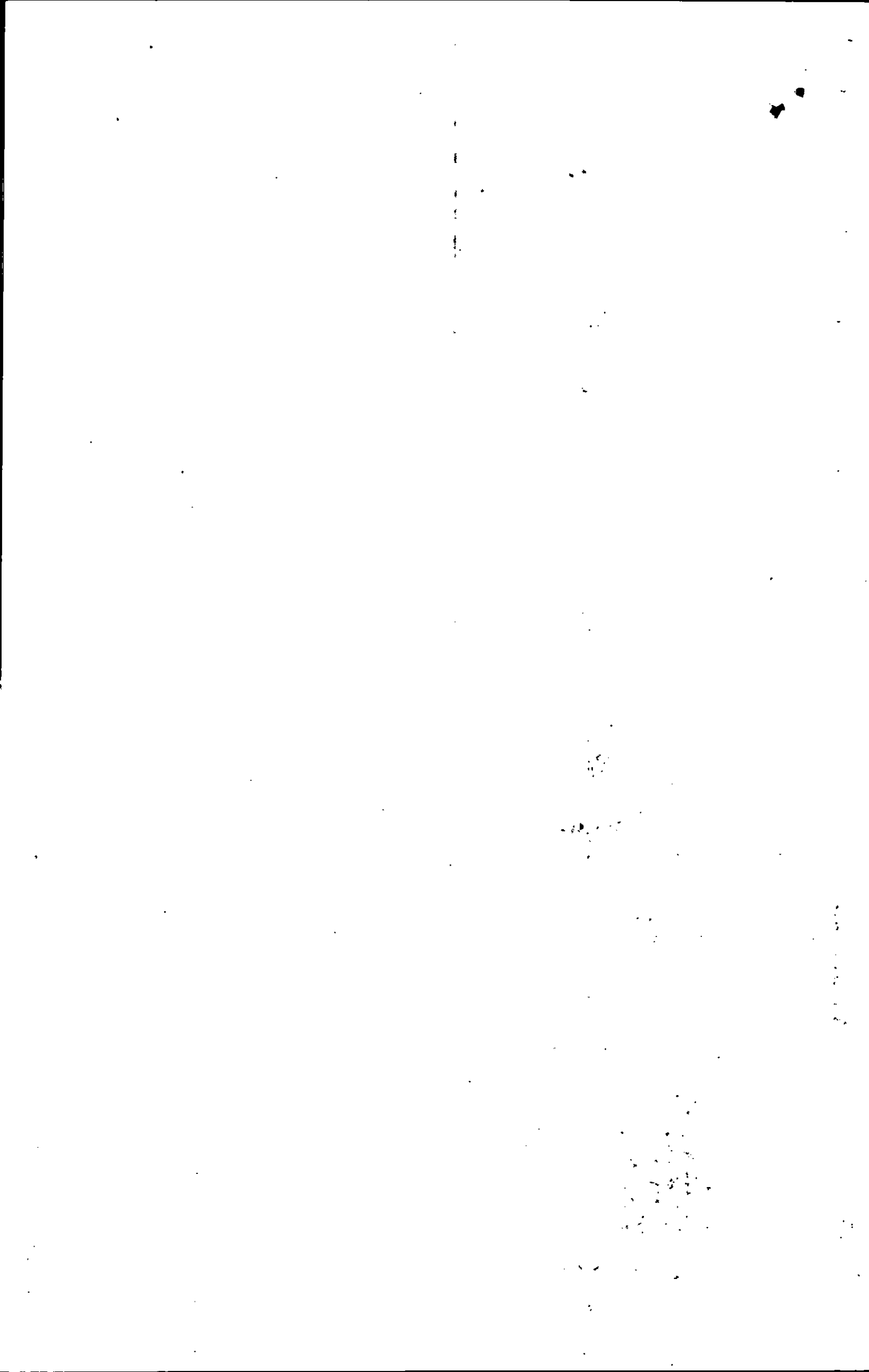
GROUNDS:-

- a. *Impugned orders are against law, facts, and circumstances of the case.*
- b. *Impugned orders are void abinitio, unlawful and having no effects against the appellant.*
- c. *Appellant applied for retirement from service on completion of twenty years of qualifying service. In this respect respondent No: 3 has circulated letter dated 24.05.2005, already Annexure C. It is clear from the bare reading of the same that qualifying service for premature retirement is 20 years. Appellant has completed requisite span of service as clear from Annexure A. Thus, orders passed by respondents are nullity in the eyes of law.*
- d. *Impugned orders are the sheer example of discrimination, personal liking and disliking.*

ATTESTE

★

[Handwritten signature]



e. Appellant requested for chance of personal hearing but respondents did not bother to consider the appellant's request rather chose to decide the fate of appeal in cursory and slip shod manner.

f. Respondents have violated the entire norms of natural justice and equity. Appeal of the appellant was decided through a single sentence that too without any justification.

g. Appellant is suffering from very critical domestic and family problems which are hindering his keen interest in the service.

It is therefore requested that on acceptance of appeal in hands, this Hon'ble tribunal may very graciously be pleased to pass orders of retirement of appellant on the basis of completion of twenty years qualifying service with costs throughout.

Yours Humble Appellant

Abdur Rahman
Dr. Abdur Rahman
Through Counsel

Ehsan Ul Haq Malik

EHSAN UL HAQ MALIK
Advocate, Dera Ismail Khan

ATTESTED
[Signature]

[Signature]

SYEDA TALAT ZAHRA
Advocate, Dera Ismail Khan

March 8, 2012

9 (14)



OFFICE OF THE PRINCIPAL /CHIEF EXECUTIVE GOMAL MEDICAL
COLLEGE /DHQ/MMM TEACHING HOSPITAL DERA ISMAIL KHAN

Exchange # 0966-9280338-39
Fax: # 0966-9280340

Office # 0966-9280341
Email: gmc.principal@yahoo.com

No.GMC/Estt:/ 4527-28/PF

Dated. 8 / 10 / 2013.

To


Dr. Abdur Rehman
Assistant Professor Orthopedic

Subject: **ABSENCE NOTICE**

With reference to this office following letters vide,

1. No.4246-50/PF dated 28/11/2012
2. No.351-53/PF dated 29/01/2013
3. No.1570-72/PF dated 22/04/2013
4. No.3438-39/PF dated 05/07/2013

You are once again directed to report your duty within 14-days and explain your position regarding willful absence from Government duty failing which disciplinary action will be initiated against you under E&D Rules 2011.


PRINCIPAL/CHIEF EXECUTIVE

Cc:

The Secretary to Government of Khyber Pakhtunkhwa Health Department
Peshawar with reference to his letter No.SOH-I/HD/1-4472013
dated 27-09-2013


PRINCIPAL/CHIEF EXECUTIVE

ATTESTED


H
= (15)

**OFFICE OF THE PRINCIPAL GOMAL MEDICAL COLLEGE
DERA ISMAIL KHAN**



No. 3438-39 /Estt./PF Dated DIKhan the 05/07/2013

Tel: Phone No. 9280338-39-41 Fax# 9280340 Email: gmc.principal@vaho.com

To

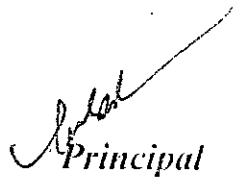
Dr. Abdur Rehman
Assistant Professor
Orthopedic

Subject: **ABSENT FROM DUTY**

Reference to this office letter No.1570-72/PF dated 22/04/2013, 351-53/PF dated 29/01/2013 and 4246-50 dated 28-11-2012.

You are found absent from Govt: duty with effect from 08-11-2012 without any approval of leave etc. So many time direction issued by this office regarding join your Government duty but all in vain.


You are once again directed to report for duty immediately and explain your position regarding willful absence from Govt: duty otherwise strict disciplinary action will recommended to high ups against you.


Principal
Gomal Medical College
Dera Ismail Khan

ATTESTED


Cc:

The Secretary to Government of Khyber Pakhtunkhwa Health Department
Peshawar for information and necessary action accordingly


Principal
Gomal Medical College
Dera Ismail Khan

**OFFICE OF THE PRINCIPAL GOMAL MEDICAL COLLEGE
DERA ISMAIL KHAN**



No. 351-53 /Estt./PF Dated: DIKhan, the 29/01 /2013

Tel: Phone No. 9280338-39-41 Fax# 9280340 Email: gmc.principal@yahoo.com

To

The Secretary
Government of Khyber Pakhtunkhwa
Health Department Peshawar

Subject: **ABSENT FROM DUTY**

Respectfully it is stated that:

1. Dr. Abdur Rehman Assistant Professor Orthopedic is absent from Government duty without any intimation / prior approval of leave.
2. He is absent from duty with effect from 08/11/2012 after expiry of 120- days earned leave on half pay vide notification No.SOI-1/HD/1-447 dated 27/06/2012.
3. The undersigned called his explanation vide No. 4246-50/PF dated 28/11/2012 and he replied that "I was busy in some serious domestic problems".
4. During absentee period an application for 4 days casual leave from 09-12-2012 submitted by him.
5. One application for 365- days earned leave on half pay (leave extension) on prescribed form is submitted to your honour in respect of above Assistant Professor for further necessary action vide No. 4360/PF dated 10-12-2012.
6. Now this office not known where about of Dr. Abdur Rehman Assistant Professor Orthopadic.

Therefore the report is submitted for further necessary action please.

Principal
Gomal Medical College
Dera Ismail Khan

Cc:

1. The Medical Superintendent DHQ Teaching Hospital DIKhan
2. Dr. Abdur Rehman Assistant Professor Orthopadic for information and necessary action with the direction to resume your duty immediately and explain your position regarding willful absence from Government duty.

Principal
Gomal Medical College
Dera Ismail Khan

ATTESTED

نوٹس غیر حاضری

آپ ڈاکٹر محمد امجد علی اسٹینڈیو پشاور آرٹھوڈیونک کولج میڈیکل کالج ڈیپارٹمنٹ میں شامل تھیں۔ تاریخ 08 نومبر 2012 سے آج تک غیر حاضری ہوئی ہے۔ تاریخ 05-07-2013 سے غیر حاضری ہے۔ آپ کو بذریعہ عدالت نمبر 4246-50/PF تاریخ 28-11-2012 351-53/PF، تاریخ 29-01-2013 1570-72/PF، تاریخ 22-04-2013 3438-39/PF، تاریخ 05-07-2013 4527-28/PF اور تاریخ 09-10-2013 8-10-2013 اطلاع دی گئی کہ آپ نے صرف 04 روز کی درخواست سمروں 09-12-2012 کی کہہ کر تاحال غیر حاضری ہے۔

لہذا آپ کو آخری بار بذریعہ نوٹس جہاں اطلاع کیا جاتا ہے کہ اشتہار کے چھینے کے بعد 15 دن کے اندر تصدیقی اور اپنی ناقصوں اور غلطیوں پر حاضری کی روچھ کر گنایاں کر لی جائیں۔ ورنہ اس صورت نگہا کے خلاف (جیمر ہسپتال ڈاکٹر کالج اور کالج ہسپتال کے قانون) 2011 کے تحت پشاور ہسپتال کی ہائیکورٹ میں شکایت کی گئی ہے۔

پروفیسر / چیف ایگزیکٹو
کومل میڈیکل کالج ڈیپارٹمنٹ اسماعیل خان

ADVERTISEMENT

Applications are invited for the following vacant posts on contract basis in the "Safe Blood Transfusion Project" opposite RMO Office Hayatabad Medical Complex, Peshawar Khyber Pakhtunkhwa.

S. No	Name of the Post	No. of Post	Qualification	Age Limit	Salary Package according to the Project Policy of the Govt.
1	Secretary (BPS-18)	1	Postgraduate qualification in Hematology/Blood Transfusion and MBBS or MBBS/Equivalent qualification recognized by PMDC with minimum two years experience in Blood Bank and Managerial position.	30-45	50000/-
2	Blood Bank Inspector (BPS-17)	2	Postgraduate qualification in Hematology/Blood Transfusion and MBBS or MBBS/Equivalent qualification recognized by PMDC, Preferably having experience in Blood Bank/Medical Laboratories	22-35	45000/-

- Terms and Conditions:**
- Appointment on the above mentioned posts will be initially for two years extendable till project life on performance basis.
 - The appointment will be liable to termination on project completion without any advance notice.
 - Only short listed candidates will be called for test/interview.
 - No T.A/D.A will be admissible.
 - In service Govt. employees should apply through proper channel.
 - Application along with complete attested documents, CV and a photograph should reach to the office of undersigned within 15 days of the advertisement.

(Prof. Dr. Muhammad Tahir Khan)
Project Director, "Safe Blood Transfusion Centre Khyber Pakhtunkhwa" Opposite RMO Office Hayatabad Medical Complex, Peshawar

INF(P) 3129 Also available on www.khyberpakhtunkhwa.gov.pk

ATTESTED

28 نومبر 2013



Government of Khyber Pakhtunkhwa
Health Department,
Peshawar.

GOVERNMENT OF KHYBER PAKHTUNKHWA



Dated Pesh: the

30th APR 2014

NOTIFICATION

No. SOH-1/447/03

WHEREAS Dr. Abdur Rehman, Assistant Professor Orthopaedic (BPS-18), Gomal Medical College, D.I. Khan upon expiry of 120 days earned leave was required to report for duty on 8/11/2012 but absented himself from duty for 18 days i.e. till 25/11/2012. His absence period w.e.f 8/11/2012 to 25/11/2012 was regularized with pay. He resumed duty on 26/11/2012 and thereafter absented himself from duty.

2. AND WHEREAS notices were issued to him on his home address as well as in the leading newspapers with direction to resume duty within 14 days failing which disciplinary action under E&D Rules 2011 will be initiated against him.

3. AND WHEREAS the accused doctor neither reported for duty nor replied to the absence notice.

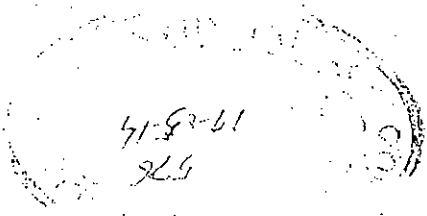
4. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa, Govt. Servants Efficiency and Disciplinary Rules, 2011, the Competent Authority is pleased to impose major penalty of "Removal from service" on Dr. Abdur Rehman, Assistant Professor Orthopaedic BS-18, Gomal Medical College, D.I. Khan with immediate effect and his absence from duty till imposition of penalty shall be treated as absence without leave.

Endst No and date even

- 1. Chief Executive, DHO/1/MMTI D.I. Khan.
- 2. Principal Gomal Medical College, D.I. Khan.
- 3. Distt. Accounts Officer, D.I. Khan.
- 4. Computer Programmer, Health Department.
- 5. P.S to Secretary Health.
- 6. P.A to Adtl. Secretary Health.
- 7. Doctor concerned.
- 8. Personal file of the doctor concerned.

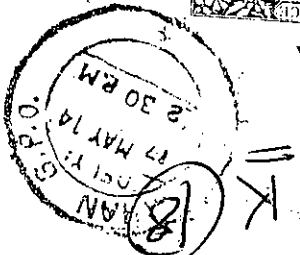
(Muhammad Jamil)
Section Officer-I

19/5/14



SECRETARY HEALTH,

ATTESTED



17

(19)

To,
The Chief Minister
Khyber Pakhtunkhwa
Peshawar

Subject: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE
ORDERS DATED 30.04.2014 ISSUED BY WORTHY SECRETARY
HEALTH RECEIVED ON 20.05.2014

THROUGH PROPER CHANNEL

Respected Sir,

It is very earnestly stated for your kind perusal that I was appointed as Medical officer (BS-17) on the recommendations of NWFP Public Service Commission on 09.12.1991. I joined the department on 10.12.1991. Till then I am serving with great zest and zeal. During my entire span of service there is no adverse entry to my credit and have unblemished service record. I attended various National and International Seminars to keep myself up-to-date so that serve the department honestly.

Due to my domestic affairs I applied for retirement on the completing of 20 years of my service, as required under the law. My request was not considered sympathetically and I was forced to suffer the rigors litigation for redress of my grievances. I also applied for extra ordinary leave without pay just to rise above my problems.

Surprisingly, I received letter dated 30.04.2014 on 20.05.2014 that I have been removed from service. These orders have been issued without any inquiry/proceedings against me. It was very dreadful for me that I have been removed from service without affording any opportunity of being heard. The Principal Gomal Medical College, Dera Ismail Khan is not competent to initiate any proceedings against me; since he is not appointing authority. Thus entire proceedings, if any, are Qoram Non Judice. Entire drama was staged in my absence and without

ATTESTED



20

conducting any proper inquiry. I was punished without observing legal and codal formalities. It is not only against the norms of natural justice but also in contrast to the provisions of law. I have been punished without affording any chance of explanation what to speak of hearing etc and have been condemned unheard. It has been indeed done in counter blast; merely on the ground that I have knocked the door of court for redress of my grievances. The impugn orders are extremely harsh and excessive.

In the wake of above submissions, I very respectfully prayed that your good self may very graciously be pleased to set at naught the orders of my removal from service. I also request for personal hearing.


Yours obedient servant



Dr Abdur Rahman

Asstt: Professor Orthopedic
Gomal Medical College,
Dera Ismail Khan

June 2, 2014

ATTESTED


BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1188/2014

Dr. Abdur Rehman

VS

Govt: of KPK & others

.....

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. Admitted correct by the respondents as the service record of the appellant is present in the concerned department.
2. Incorrect. The notification dated 24.5.2005 was issued for civil servant and any civil servant can opt retirement after completion 20 years service. Therefore it depend upon the choice of the servant to get the benefits of retirement after completion of 20 years of service and not on the discretion of the competent authority
3. Incorrect. The appellant had opted for retirement and therefore he had not kept continue his service and absent from duty as the appellant considered that he has opted for retirement therefore he did not keep continue his duty and on the basis of that absence, absence notice was issued to the appellant along with publication in the newspaper.
4. Not replied according to para 4 of the appeal. Moreover the appellant was a civil servant and has genuine cause of action therefore the appellant has right to entertain the jurisdiction of

this Honourable Tribunal for the redressal of his genuine grievance.

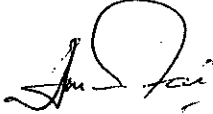

GROUND:

- A. Not replied according to para A of the appeal. Moreover para A of the appeal is correct.
- B. Incorrect. While para B of the appeal is correct.
- C. Incorrect. The appellant has genuine cause of action and come to this Honourable Tribunal for the redressal of his genuine grievance. Moreover the notification dated 24.5.2005 was issued for civil servant and any civil servant can opt retirement after completion 20 years service.
- D. Incorrect. While para D of the appeal is correct.
- E. Not replied according to para E of the appeal. Moreover para E of the appeal is correct.
- F. Incorrect. The notification dated 24.5.2005 was issued for civil servant and any civil servant can opt retirement after completion 20 years service. Therefore removal from service in such situation is bad in the eye of law and norms of justice.
- G. Incorrect. While para G of the appeal is correct.
- H. No comments.

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

APPELLANT

Through:

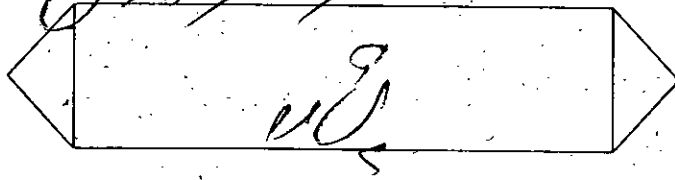

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
& 
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

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

ABDUL MAJIED KHAN LAGARI
Abdul Majied
Oath Commissioner D. I. Khan
Date: 27/12/16

[Signature]
DEPONENT



2ء منجانب
کلمہ الرحمان بنام حجت دربار کلمت

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام **السماور** کیلئے محمد اصفیٰ یوسف کی طرف سے اور منجانب خان اور منجانب

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے

اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Abman

20

Handwritten signature and text in Urdu, including the name 'Abman' and some illegible text.

المرقوم

واہ العہد

کے لئے منظور ہے۔

مقام

VAKALAT NAMA

NO. 1188 /2014

IN THE COURT OF K.P.I.C Service Tribunal, Peshawar

Dr- Abdul Rehman

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Health Dept-

(Respondent)
(Defendant)

I/WE, Dr. Abdul Rehman.

Do hereby appoint and constitute **Syed Noman Ali Bukhari 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 24/10/2017

Abdul Rehman
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate, Peshawar.