

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1763/2024

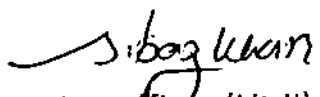
Dr. Shoukat Ali ----- Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa and others ----- Respondent

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Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1763-P/2024

Dr. Shaukat Ali.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.01 to 03

Respectfully Sheweth:

Preliminary Objections:-

Khyber Pakhtunkhwa
Service Tribunal

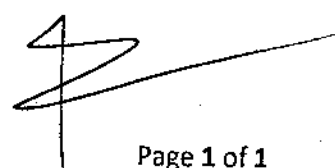
Diary No. 16958

Dated 21-10-24

- i. That the appellant has got no cause of action or locus standi to file the instant appeal.
- ii. That the appellant has deliberately concealed the material facts from the Honorable Tribunal, hence, liable to be dismissed.
- iii. That the appellant has filed the instant appeal just to pressurize the replying respondents with mala fides intention.
- iv. That the appellant has filed the instant appeal on mala-fide motives.
- v. That the instant appeal is against the prevailing Law and Rules.
- vi. That the appeal is not maintainable in its present form.
- vii. That the appellant has not come to this Honorable Tribunal with clean hands.
- viii. That the instant appeal is bad due to non-joinder of necessary and mis-joinder of unnecessary parties.
- ix. The similar matter has been pending before the Peshawar high court in WP No.3835-P/2024(copy annex-A)

ON FACTS:

1. Petain to record and the para is subject to proof.
2. Subject to proof as no documentary proof has been annexed by the appellant in support of his claim.
3. Correct to the extent that with the approval of competent authority the appellant was posted as Director General Health Services Government Of Khyber



Pakhtunkhwa vide notification dated 17/01/2023 in accordance with the provision of section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973. Rest of the para is incorrect.

4. Incorrect. The appellant has not annexed any supportive documents which may substantiate his allegation in the para furthermore the appellant being DGHS was competent to post an official in BPS-16 so far as the posting against the post of DHO BPS-20 is the competency of the worthy Chief Minister of the province and not of the appellant, therefore the allegation in the para is baseless.
5. Correct to the extent of allegations of receiving illegal gratification of Rs.14000 to approve the transfer order of Irum Noreen a Clinical Technician Radiology BPS-12 with respect to transferring her from MTI Bannu to MTI D.I.Khan. In order to avoid mis-using of his office the competent authority (Worthy Secretary Health) suspended the appellant under rule 6(1) of the Khyber Pakhtunkhwa Govt. servants (Efficiency and Disciplinary) Rules, 2011. A fact finding inquiry was initiated against the appellant wherein the allegation was proved (Annexure-B) therefore a formal inquiry was notified and the appellant was issued a charge sheet along with statement of allegation (Annexure-C).
6. Correct to the extent WP no.2268-P/2024 titled Dr. Shaukat Ali Vs Govt. of Khyber Pakhtunkhwa & Others which was dismissed by the Hon'ble Court vide judgment dated 15/05/2024. It is worth mentioning that the appellant challenged the judgment of the Peshawar High Court dated 15/05/2024 before the apex Court in CPLA No.2231 of 2024 which was dismissed vide judgment dated 25-09-2024 (Annexure-D)
7. Correct to the extent of notification dated 16/05/2024 on the approval of competent authority (Chief Minister Khyber Pakhtunkhwa), the appellant was transferred from the post of DGHS with direction to report to the Directorate General Health Services where as private respondent No.4 was posted as Director General Health Services Khyber Pakhtunkhwa in the best public interest both the appellant and private respondent No.4 complied the transfer notification dated 16/05/2024. It is noteworthy that the Supreme Court in 2020 PLCCS 1207, has held as under

"PLACE of servicePrerogatives of employer...Government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve."
8. Pertains to record however the impugned Notification has been issued under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 in the public interest. Reply on the grounds is as under:



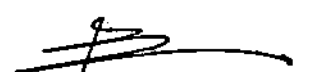
④

Similarly in another judgment reported as 2004 PLC (CS) 705 Supreme Court
~~... could not claim posting at a particular station or at~~

③

GRUNDS:

- A. Incorrect. The impugned Notification dated 16-05-2024 has been issued in accordance with law, Rules and principles of natural justice. Furthermore the same is not in contravention to the judgment of the Hon'ble Peshawar High Court Peshawar. No vested right of the petitioner have been violated by the replying respondents therefore he is not entitled for any relief from the Hon'ble Court.
- B. Incorrect. The matter of suspension has already been ad-judicated by the apex court as discussed in para-06 of the facts. The impugned notification dated 16/05/2024 has been issued by the replying respondent with bona-fide intention in the public interest furthermore the apex court has held that mala-fide cannot be attributed to the executive/Govt functionary, performing functions in furtherance of legal mandate in absence of any cogent and convincing material in support of plea of mala-fide, it shall be presumed that the action taken the executive / Govt functionary in pursuance of a lawful mandate is not tainted with mala-fide. Reliance is placed on 2012 SCMR 455 (O & N), 2014 PLD Supreme Court 01, 2023 PLD Lahore 245.
- C. Incorrect. The appellant concealed the material fact in order to mis-guide this Hon'ble Tribunal that normal tenure of a civil servant is 02 years however the competent authority us 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 transfer a civil servant even before completion of his / her normal tenure. The apex court has laid down following principles in a reported judgment 2017 SCMR 798:
- It is within the competence of the authorities to transfer a civil servant from one place or post to another to meet the exigencies of service or administration; provided his terms and conditions of service are not adversely affected.
- i. A Civil servant has no vested rights to claim posting or transfer to any particular place of his choice nor has any right to continue to hold a particular post at a particular place.
 - ii. His transfer and posting is limited to the given tenure, or at the pleasure of the competent authorities.
 - iii. Normally, he is not required to acquire any specialized skill or professional training in order to serve the new post or place.
 - iv. His seniority and progression of career in terms of promotion and other benefits of the services are not affected by the transfer and he remains pegged to his batch or group to which he was initially appointed after completing the required common and specialized trainings and after passing the required departmental examinations conducted by the FPSC.
 - v. He is posted and transferred routinely in the same grade or scale that he possesses in his service or group; unless the rule requires so or allows so. The appellant has been treated in accordance with the above dictum of the apex court.



Similarly in another judgment reported as 2004 PLC (CS) 705 Supreme Court

"(b) Validity... Civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at any time in exigencies of service or on administrative ground."

The Honorable Tribunal also dismissed Service Appeal No. 7035/2021 titled "Dr. Ejaz Ahmad vs Govt. of KPK" dated 24-05-2022 on the basis of the above referred judgment.

D. Already replied in Para-B and C above.

E. Incorrect. The Apex Court has held in 2024 PLC Cs Supreme Court 77

"Civil service--- Transfer and posting....interference in transfer and posting by Tribunals or Courts....Encroachment upon domain of executive...Transfer of a government official from one place or post to another to meet the exigencies of services was within the exclusive domain and competence of the competent authority of the executive Organ of the State and, ordinarily, it is not amenable to interference except an extra ordinary circumstances.....Said principles is subject to the condition that the terms and conditions of service are not adversely affected. Moreover, an official has no vested right to claim to be posted /transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place...transfer and posted of a Government servant is limited to the given tenure, if any or at the pleasure of the competent authorityQuestion of whether the posting and transfer made by the competent authority was in the public interest is not opened to judicial review by a tribunal or court and utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities..."

In 2023 PLC Cs Supreme Court 292 as under;

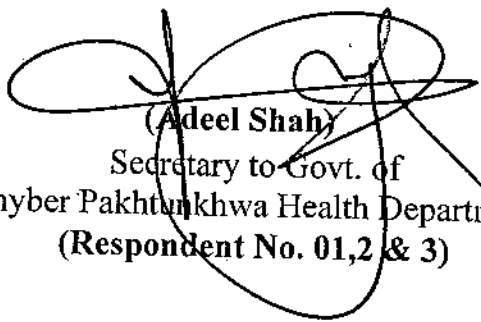
"(b)Civil Service--- 'Transfer' and 'posting'---Scope---Transfer of an employee/public servant fell within the ambit of "terms and conditions" of service ,which included transfer and posting...transfer and posting was part of service and it was for the authority to determine where services of any staff member were required."

F. Incorrect. The impugned notification has been issued in accordance with transfer posting policy as well as section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 in accordance with principle of good governance.

G. Incorrect. Already replied in Para-B of the grounds.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


(Adeel Shah)
Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
(Respondent No. 01,2 & 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO.1763/2024

Dr. Shaukat Aliappellant

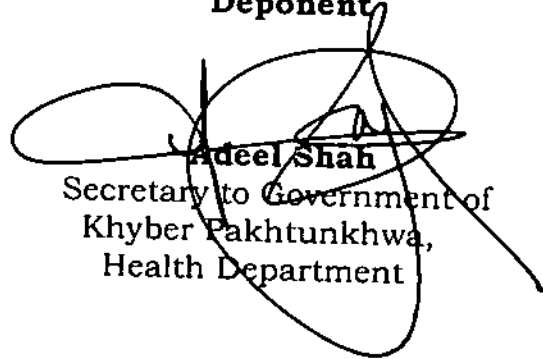
Versus

Govt: of Khyber Pakhtunkhwa and others Respondents

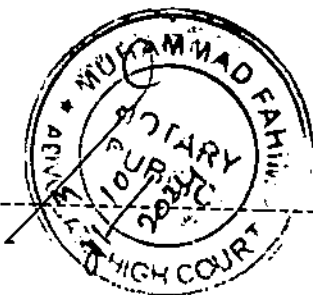
Affidavit

I Adeel Shah, Secretary to Government of Khyber Pakhtunkhwa Health Department is hereby, solemnly affirmed on oath that the contents of the Parawise Comments on behalf of Respondents are true and correct to the best of my knowledge and belief as per information provided and nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondent neither has been pleased ex-parte nor their defense has been struck off/cost.

Deponent


Adeel Shah
Secretary to Government of
Khyber Pakhtunkhwa,
Health Department

ATTESTED

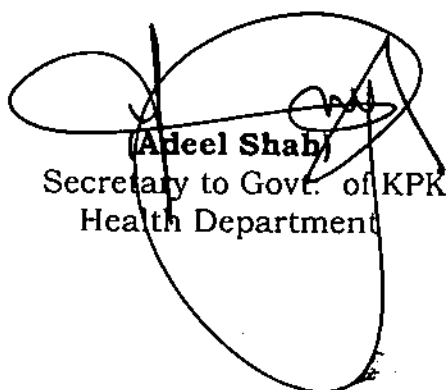




**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

Mr. Shah Baz Khan, Section Officer (Litigation-II), Health Department Civil Secretariat Peshawar is hereby authorized to attend/defend the court cases and file comments on behalf of Secretary to Government of Khyber Pakhtunkhwa Health Department before the Service Tribunal and lower Courts.


(Adeel Shah)
Secretary to Govt. of KPK
Health Department

Before the Peshawar High Court, Peshawar
(Constitutional Jurisdiction)

Annex-A

(8)

WP No. 3835-P /2024

Dr Shaukat Ali son of Gul Nawaz Khan
Resident of Mussarat Shaukat Medical Complex, Balambat Road
Timergara, Lower Dir

... Petitioner

Versus

1. **Government of Khyber Pakhtunkhwa**
Through Chief Secretary
Civil Secretariat, Peshawar
2. **Director General, Anti-Corruption Establishment KPK**
Hayatabad, KPK, Peshawar
3. **Secretary Health Department**
Civil Secretariat, Peshawar
4. **Dr. Abbas Khan**
Director General, Drug Control & Regulatory Services, KPK
(serving as Member of Committee constituted vide Notification dated 04.06.2024 by Chief
Minister, Khyber Pakhtunkhwa)
Warsak Road, Peshawar
5. **Brigadier (R) Muhammad Mussadiq Abbasi**
Special Assistant to Chief Minister on Anti-Corruption, Khyber Pakhtunkhwa
(serving as Convener of Committee constituted vide Notification dated 04.06.2024 by
Chief Minister, Khyber Pakhtunkhwa)
Civil Secretariat, Peshawar
6. **Dr Muhammad Saleem**
Director General Health Services
DGHS Office, Warsak Road, Peshawar

... Respondents

Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Respectfully sheweth:

WP3835-2024 SHOUKAT ALI VS GOVT CF PG163

Attest
S. Sajid Khan

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

- 2 -

(9)

Claim in Petition

1. That through the instant petition, the Petitioner:
 - (i) impugns the notification dated 04.06.2024 (the "Impugned Committee Notification") whereby a six-member committee was unlawfully constituted with the malafide intention of harassing and maligning the Petitioner and illegally and falsely entangling him in criminal proceedings, and;
 - (ii) impugns the notification dated 16.05.2024 (the "Impugned Transfer Notification") being mala fide and issued for the political victimization of the Petitioner.
 - (iii) seeks protection against harassment and unlawful threats of arrest and detention on fabricated criminal charges by the Anti-Corruption Establishment and that no adverse action be taken against him;

*Sub Judice
before S.C. and
S.A. 1763/2024
LDH: 9/10/24*

Parties

2. That the Petitioner is an experienced BPS-20 Management Cadre officer with a distinguished career, and his last posting was as Director General Health Services, Khyber Pakhtunkhwa (DGHS, KPK). He is currently unlawfully transferred / posted to the Directorate General, Health Services as Officer on Special Duty (OSD) following a mala fide / illegal suspension from the post of DGHS, KPK.
3. That the Respondent No.1 is the Provincial Government of Khyber Pakhtunkhwa, which connotes the Chief Minister and the Provincial Ministers taken together, as per Article 129 of the Constitution. The Respondent No.2 is the Anti-Corruption Establishment created by Anti-Corruption Establishment Ordinance, 1961 through its Director General. Respondent No. 3 is the Secretary, Health Department, who as per the Rules of Business, 1985 is the official head of the Department.
4. That the Respondents Nos. 4 and 5 are two out of the six- members of the committee constituted vide Notification dated 04.06.2024 by Chief Minister, Khyber Pakhtunkhwa.

Attested
S. Gaj Khan
Section Officer (I.II-I)
Health Department
Khyber Pakhtunkhwa

- 5. That Respondent No. 6 is a BPS-20 officer of Management Cadre, who is currently occupying the post of the Director General Health Services, KPK following the unlawful posting / transfer of the Petitioner.

Facts

- 6. That in 1991, the Petitioner was initially appointed as Medical Officer in the Department of Health, Khyber Pakhtunkhwa. The Petitioner steadily and gradually rose through the ranks in the Department. He eventually opted to join the Management Cadre and served at various management posts, and was lastly posted as DGHS, KPK on 17.01.2023.
- 7. That the Petitioner served as DGHS, KPK with dedication, and the first year of his appointment (i.e. the year 2023) the activities of the Department of Health ran smoothly without any complaints. However, in February, 2023 the Petitioner was approached by influential quarters, particularly by Shafi Ullah Khan, a member of the KPK Provincial Assembly, to seek extra-ordinary favours and was otherwise pressured to abuse the powers of his position. Illegal demands were made to appoint specific individuals in the Department of Health on available vacancies, against considerations of merits and by circumventing proper procedure for transparency in appointments. A hand-written list of forty-one individuals was provided who were to be accommodated for posts of drivers, security guards, tube-well operators etc. The Petitioner steadfastly refused and resisted all such influence, however in doing so, the Petitioner made himself a target for harassment and attacks to his career and reputation.

Malicious campaign commenced against the Petitioner

- 8. That soon after the last incident of illegal demands highlighted hereinabove, a targeted malicious campaign commenced against the Petitioner.
- 9. That at the behest of the member of KPK Provincial Assembly, a fictitious allegation was fabricated to the effect that the Petitioner had received illegal gratification (of a meagre sum of Rs. 14,000/- only) to approve the transfer order of Dr Irum Noreen, a Clinical Technician Radiology (BPS-12) who had moved an application seeking transfer from MTI Bannu to MTI D.I. Khan. All the proper procedures were followed with respect to documentation and NOCs before permission was granted on recommendations received from appropriate channels. Based on said fabricated allegation, an inquiry was initiated and used as unlawful justification for the issuance of Notification dated 26.04.2024 whereby the Petitioner was suspended from the post of DGHS, KPK (the "Suspension

*Referral
was from
informed*

*Attested
S. Naz Khan*

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

Notification") without any inquiry, rhyme, or reason. It is to be noted that the Petitioner was never served with any charge sheet or statement of allegations or given any opportunity to be heard before Suspension Notification was passed, evincing clear malafide on part of the Government. Interestingly, the suspension was passed by Secretary, who was not competent to pass such order as Petitioner, being a member of the Government, could only have been suspended by the Chief Secretary after the approval of the Chief Minister - which was not done. That after the Suspension Notification was passed, a member of the KPK Provincial Assembly also began a social media campaign aimed at harassing and maliciously damaging the reputation of the Petitioner.

Already served charge sheet

10. That aggrieved of the unlawful notification, the Petitioner instituted WP No. 2268/2024 in the Peshawar High Court. The same was disposed off vide order dated 15.05.2024, with directions to the Chief Secretary Khyber Pakhtunkhwa to "see as to whether any departmental proceedings have been initiated by the "COMPETENT AUTHORITY" in the instant matter and also to ensure that such suspension is not used as a tool to post out the petitioner from the post of Director General, Health Services, Khyber Pakhtunkhwa" [Emphasis Added].

Completed as directed by court. Charge sheet served. No further action pending.

11. That despite the clear direction to ensure that Suspension Notification was not to be used as a tool to post out the Petitioner from his post, the Petitioner was posted / transferred vide Impugned Transfer Notification dated 16.05.2024 in clear violation of the orders of the High Court and with malafide intent to harass and malign the Petitioner.

12. That aggrieved by the inquiry, the suspension and the posting / transfer, the Petitioner filed a representation before the Chief Secretary, Khyber Pakhtunkhwa however the same remains undecided and without any fate till date.

Constitution of six-member committee

13. That this malicious campaign against the Petitioner has continued to escalate and most recently the Chief Minister, Khyber Pakhtunkhwa, at the behest of the member of KPK Provincial Assembly, just after posting the Petitioner out, malafidely constituted a six-member committee vide Notification dated 04.06.2024 to 'discuss the uninterrupted availability of essential medicines and to maintain transparency in the procurement process in Districts...'. The notification does not specify any law which empowers the Chief Minister to constitute a committee of this nature and that too headed by a political

Attested
S. Bag Khan

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

appointer i.e. Adviser on Corruption to the CM, KPK. It also makes no mention of any complaint or allegation which has prompted constitution of such committee.

14. That it is interesting to note the Terms of Reference (ToRs) of the Committee, which are as follows:

- I. *The Committee will look into the requirements of measures in the distribution and the item provided in the recent procurement.*
- II. *The upcoming procurement* ✓
- III. *How to streamline and transparent the procurement system.*
- IV. *Lapses if any, the responsible shall be identified.* ✓
- V. *Any other issue by the committee deem appropriate to be highlighted."*

15. That on bare perusal the ToRs, they appear to have been kept deliberately and malafidely vague and open-ended allowing for the Committee to look into any matter without establishing any foundation. That the ToRs also substantially focus on looking into past transactions which is not in consonance with the purpose of the Committee which is supposedly to ensure uninterrupted availability of essential medicines. It does not transpire as to why the Committee is so focused on the past procurements when there is no tangible complaint on the record to necessitate such a course.

16. That the inclusion of certain individuals on the Committee does not appear to be in consonance with what the Committee is currently doing, as would become transparent later in the body of this petition. However, it is interesting to highlight few concerns about the certain members of the Committee;

- (i) That the inclusion of Respondent No.4 demonstrates clear mala fide against the Petitioner. That the Respondent No. 4 is a BPS-18 Officer currently serving on acting charge basis at BPS-19. He has been serving at various posts in the Directorate of Drug Control and Pharmacy Services since 2014. That throughout his time in this Directorate he has been involved in procurement processes in varying capacities and has abused his position for grant of illegal benefits in procurement. The appeals before the KPK Public Procurement Regulatory Authority and the decisions thereon highlight the irregularities in procurement of medicines and medical devices during this period. That the Respondent No. 3 had also been serving as Chairman of the Selection and Rate Contracting Committee of the Government Medicine Coordination Cell vide notification dated 15.03.2023.

Attested
S. Boghwan

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

That the Petitioner brought to the attention of the competent authorities that the Selection and Rate Contracting Committee constituted vide Notification dated 15.03.2023 was not in line with established practice. Subsequently, an inquiry into procurement processes was undertaken and the Provincial Government saw fit to constitute a new Selection and Rate Contracting Committee vide Notification dated 28.04.2023, whereunder the DGHS, KPK would now serve as Chairman of the Selection and Rate Contracting Committee. That the Respondent No.4, having a tainted record with respect to procurement, and having the ulterior motive of regaining control over procurement process has clearly been included on the six-member Committee to achieve an illegal outcome which will further harass and malign the Petitioner.

(ii) That the Respondent No. 5 is the Convener of the Committee. Tasking a politically appointed figure to head the Committee, evinces clear malafide. That interestingly, vide letter dated 07.06.2024, the Respondent No. 5 has sought to procure record regarding the procurement history for medicines and medical devices by the Department of Health specifically for FY 2023-2024, which is the period of tenure of the Petitioner as DGHS. That the notification does not mention that any decision was reached by the Committee as a whole to look into procurement for that particular year, or if any complaint or allegation of mismanagement had necessitated such probe. That it is pointed out that no complaint was ever lodged regarding interrupted availability of medicines or medical devices by any administrator or official during the tenure of the Petitioner. Further, the letter dated 07.06.2024 has been followed by letter dated 24.06.2024, 03.07.2024 and 18.07.2024 demanding the desired record with undue haste. That the conduct shows patent malafide on the part of Respondent No. 5. Furthermore, this fishing exercise is being facilitated by Respondent No. 6, who has replaced the Petitioner as DGHS, KPK, and has constituted another enquiry committee purportedly in compliance of directions of six-member Committee. While the Petitioner, who was actually serving as DGHS, KPK during FY 2023-2024, is not being associated with the probe in any manner.

17. That since the constitution of the Committee, the Petitioner has begun to receive phone calls from someone claiming himself to be an Assistant Director of the Anti-Corruption Establishment, KPK, demanding that the Petitioner surrender himself to interrogation. That the Petitioner has asked for provision of any official summon or charge-sheet of inquiry but none of have been provided. The harassing phone-calls have continued, and now have escalated to threats of arrest and detention unless Petitioner himself surrenders

*Attested
S. Iqbal Khan*

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

to the officials of the Anti-Corruption Establishment. That it is clear that influential persons are using their position to harass and threaten the Petitioner and using the Anti-Corruption Establishment as their tool illegally and unlawfully.

- 18. That in the last week, as the Petitioner has travelled to Islamabad to seek legal advice on the malicious campaign underway against him, he has begun receiving calls from officers of the Anti-Corruption Establishment redoubling their threats of arrest and detention. They claim to be watching the Petitioner's movement and have threatened to arrest him as soon as he returns to KPK province. The officers have refused to reveal to the Petitioner what manner of complaint or charge has been lodged against him, preventing him from seeking relief of protective / transit bail.
- 19. That being aggrieved of the Impugned Notification and the proceedings conducted thereunder, the illegal harassment by Anti-Corruption Establishment, and the non-implementation of judgment regarding transfer, the Petitioner has no other adequate or efficacious remedy available to protect his fundamental rights guaranteed under the Constitution but to approach this Court on *inter alia* the following grounds:

Grounds

- A. That the Impugned Committee Notification is prima facie illegal and unlawful. That the Impugned Committee Notification does not specify which power is being exercise by the Chief Minister for the constitution of the Committee and what law or rules the Committee is to operate under. It is to be noted that the constitution of the Committee is not by decision of the Provincial Government or the Cabinet, but by the Chief Minister alone who has no express authority to constitute a committee in this manner. That without prejudice, even where constitution of a committee is to be at the discretion of the Chief Minister, the discretion cannot be exercised unreasonably, arbitrarily and without application of mind as the same would be in violation of the principles of good governance. [Reference may be made to judgment reported as 2010 SCMR 1301, Tarig Aziz-Ud-Din and others in re. Human Rights Cases. The Impugned Notification is liable to be declared void and set-aside on this ground alone.
- B. That the Impugned Committee Notification is liable to set-aside and declared void having deliberately vague and unspecified ToRs. The ToRs are not in consonance with the proclaimed purpose of constitution and instead have been phrased in an open-ended fashion making the Committee a perfect tool for the harassment of the Petitioner as it can indulge

*Attested
S. Sajid Khan*

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

in a fishing exercise and use the smallest benign irregularity as ammunition to discredit and malign the Petitioner or anyone else, without providing any opportunity of defense.

- C. That the composition of the Committee patently demonstrates mala fide against the Petitioner by virtue of the inclusion of Respondent No. 3 and 4. That Respondent No. 3 by virtue of his history and bias cannot serve as an objective member of any committee related to the issue of procurement, or any committee which is inquiring into events taking place during the tenure of the Petitioner as DGHS. That similarly, the Respondent No.4 has clearly demonstrated by his conduct that he is not neutral but has deliberately and maliciously used the Committee to target the Petitioner, instead of focusing on upcoming procurement or streamlining procurement processes for future which is the actual proclaimed objective of the Committee. It is reiterated that no complaint regarding interrupted availability of medicines or medical devices was ever lodged by any administrator or official during tenure of Petitioner as DGHS.

- D. Even otherwise, the Respondent No.4 being the Special Assistant to the Chief Minister cannot serve as member or convener of such committee as he is not vested with any executive authority of the Province and his functions are restricted to those of an advisory capacity. [Reference may be made to judgments reported as PLD 2021 Isb 123, Farrukh Nawaz Bhatti v. Prime Minister, and PLD 2020 Isb. 449, Syed Pervaiz Zahoor v. Prime Minister, Prime Minister]. Interestingly, Respondent No. 4 is exercising executive powers of the investigating agencies and procuring record pertaining to the year 2023 to 2024 and is conducting a fishing exercise – such fishing exercise is clearly prohibited by law. Furthermore, the Respondent No. 4 does not have a protected tenure of employment; rather he serves at the pleasure of the Chief Minister and it is a foregone conclusion that he will not act with independent mind but align decisions with interest of the Chief Minister, who as highlighted above is acting on the behest of certain influential people.

- E. That the intentional malafide against the Petitioner by person of authority is clear and manifest. That the Petitioner was falsely implicated in an illegal gratification case, which *prima facie* lacked foundation and was initiated without adherence to any proper procedure or due process; even orders passed by the Peshawar High Court directing for compliance with law and procedure had no effect on state / government authorities as they continued in their harassment of the Petitioner, first by posting / transferring him and subsequently by initiating a separate fishing exercise aimed at making the Petitioner the target of a false criminal investigation / prosecution.

*Attest
S. Bay Umam*

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

- F. That the malicious campaign against the Petitioner along with the threats and harassment of the Anti-Corruption Establishment make it clear that the Petitioner is at risk of losing his liberty by reason of fabricated and false criminal allegations and being the subject of continued harassment for refusing to give in to illegal demands of influential persons. That such conduct by state / government authorities without following proper procedure on the pretext of some inquiry is a violation of the fundamental rights of the Petitioner as contained in Articles 9, 10-A and 25 of the Constitution. [Reference may be made to judgment reported as 2022 YLRN 56, Akber v. Province of Sind]

- G. That the Government posted the Petitioner vide issuance of Impugned Transfer Notification, clearly in violation of the High Court's order which prohibited any politically motivated transfer. Clearly, when the ordinary tenure of serving in a post was three years, such curtailment of the tenure has to be based on tangible and justified reasons necessitating exigency of service; which were clearly missing in this instance.

- 20. That the Petitioner reserves the right to raise further grounds at the time of submissions.

Prayer

In light of the aforementioned it is humbly prayed that this Court may kindly:

- (i) Set-aside the Impugned Committee Notification, being illegal, unlawful, issued without authority and therefore void;

- (ii) Quash the proceedings initiated and / or the steps taken by the Committee and other government functionaries in pursuance to the Impugned Notification being unlawful, illegal, arbitrary, unconstitutional;

- (iii) Set aside the Impugned Transfer Notification being malafide and issued to politically victimize the Petitioner;

- (iv) Direct the Anti-Corruption Establishment and / or the Government to produce record of any inquiry or investigation underway including complaints, if any, against the Petitioner;

- (v) Suspend the Impugned Notification as well as the proceedings being conducted pursuant to the Impugned Notification until the final adjudication of the instant petition;

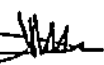
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S. Bay Khan

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

(vi) Restrain government / state functionaries including the Anti-Corruption Establishment from arresting / detaining the Petitioner with respect to any inquiry, investigation and / or criminal proceedings for corruption or taking any adverse action against the Petitioner until final adjudication of the instant petition;

(vii) Suspend the Impugned Transfer Notification;

(viii) Grant any other relief that it considers just and appropriate in the facts and circumstances of the case.


Petitioner



Through counsels

Barrister Maleeka Bokhari
Advocate High Court


Sajcel Sheryar Swati
Advocate Supreme Court


Saman Mamoon
Advocate High Court


Barrister Faiza Asad
Advocate High Court

CERTIFICATE

Certified that Petitioner has not filed any writ this Court, or any other court, on the cause of action agitated in the instant writ petition.


Petitioner

*Attested
s/ Bay Uham*

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

Annex-B

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7

INQUIRY REPORT ON THE PROBE INTO THE ALLEGED RECEIPT OF GRATIFICATION BY DR. SHAUKAT ALI (BS-20), DIRECTOR GENERAL HEALTH SERVICES, KHYBER PAKHTUNKHWA FOR THE TRANSFER OF MS. IRUM NOREEN D/O RUSTAM KHAN, CLINICAL TECHNICIAN (CARDIOLOGY) BS-12 FROM MTI-DHQ TEACHING HOSPITAL, BANNU TO MTI-MMM DI KHAN.

INTRODUCTION:

The Health Department, Government of Khyber Pakhtunkhwa, with the approval of the Chief Secretary, Khyber Pakhtunkhwa (Competent Authority), vide Notification No. SOH (E-V) /4-4/ 2024 dated 03.05.2024, appointed the undersigned as Inquiry Officer to probe into the alleged gratification received by Dr. Shaukat Ali, Director General Health Services (BS-20) of Health Department Khyber Pakhtunkhwa for the transfer of Ms. Irum Noreen D/o Rustam Khan, Clinical Technician (Cardiology) BS-12 from DHQ Teaching Hospital (MTI) Bannu To MMM Teaching Hospital (MTI) DI Khan.

BACKGROUND:

Director General Health Services, Khyber Pakhtunkhwa Peshawar issued Office Order No. 766-71/AE-VI/DGHS dated 02.04.2024 (Annexure-I) transferring Ms. Irum Noreen D/o Rustam Khan, Clinical Technician (Cardiology) BS-12 from DHQ Teaching Hospital (MTI), Bannu to MMM Teaching Hospital (MTI) DI Khan. The Competent Authority (Secretary, Health Department) upon receiving complaints of gratification involved in the transfer of Ms. Irum Noreen D/o Rustam Khan, Clinical Technician (Cardiology) BS-12, suspended the services of Dr. Shaukat Ali vide Health Department Notification No. SOH (E-V) 4-4/2024 dated 26.04.2024 till finalization of Inquiry (Annexure-II). The Office Order of the subject transfer earlier issued was subsequently withdrawn void ab-initio vide Notification No. 4980-85/AE-VI dated 26.04.2024 (Annexure-III). The Competent Authority therefore initiated the Inquiry to probe into the matter and submit the report (Annexure-IV).

METHODOLOGY: -

Initiating the proceedings, the Health Department was asked to nominate a Departmental representative to assist in the Inquiry vide letter No.SO (Housing)/HD/1-19/Gen./2023/3539-41 dated 10th May, 2024 (Annexure-V). Accordingly, Dr. Shahid Younas, Additional Director, General Health Services was nominated by Health Department (Annexure-VI).

ATTESTED
Advocate General
Supreme Court of Pakistan
For Govt. of K.P.K. Peshawar

Attested
S. Sajid Khan
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

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- i. Retrieval of record relevant to the subject transfer from the Directorate General, Khyber Pakhtunkhwa MTI Bannu, MTI DI Khan and its examination.
- ii. Interview with Ms. Irum Noreen, Clinical Technician (Cardiology) BS-12, and the accused Ex-DGHS Dr. Shaukat Ali (BPS-20) and others and recording of statements.
- iii. Analysis and Findings about the Administrative setup of the DGHS office dealing with cases of transfers and examining available records as well as the relevant law and legal procedure for the transfer.
- iv. Conclusion and Recommendations.

PROCEEDINGS:

i. Retrieval Of Record Relevant To The Subject Transfer From The Directorate General Health Services, Khyber Pakhtunkhwa MTI Bannu, MTI DI Khan And Its Examination.

The Departmental representative Dr. Shahid Younas, provided all the relevant record available within the Directorate General Health Services, Khyber Pakhtunkhwa including the original application, Diary and Dispatch register entries etc. However, MTI, Bannu, and MTI, D.I. Khan failed to provide complete record. A copy of MTI Act was also made available. The departmental representative could not provide the letter or rules and regulations which lays down the job description of DGHS. The same was not even found in the administrative department. The Secretary Board of Governors (BOG), MMM Teaching Hospital (MTI) DI Khan, and DHQ Teaching Hospital (MTI) Bannu were also asked to immediately provide attested copies of the application submitted by Ms. Irum Noreen for grant of NOC regarding her transfer from MTI Bannu to MTI DI Khan, to verify the originality of the background record (Annexure-VII & VIII). Secretary BOG MTIs DI Khan and Bannu submitted attested copies of NOCs only (Annexure-IX), without providing the details of the meeting of BOG of both the MTI's in the matter, i.e., the full background record of the NOC issuance process. Interestingly to note here that, on the scheduled day of obtaining record from DGHS office, a demonstration was arranged at the DGHS Office by some employees of that Office in support of the suspended accused officer displaying banners for his reinstatement obviously to influence the inquiry proceedings and create hindrances in obtaining record. Having the available record in hand, both Ms. Irum Noreen d/o Rustom Khan Clinical Technician (Cardiology) BS-12 and Dr. Shaukat Ali Ex-DGHS were called to record their statements and also to be questioned.

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*Attested
S. Bazz Khan*

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Section Officer (Lit-II) *Adviser on Record*
 Health Department *Supreme Court Of Pakistan*
 Khyber Pakhtunkhwa *Govt. Of K.P.K. Peshawar*

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ii. Interview With Ms. Irum Noreen, Clinical Technician (Cardiology) BS-12, And The Accused Ex-DGHS Dr. Shaikat Ali (BPS-20) And Others And Recording Of Statements.

The transferred Official, Ms. Irum Noreen D/o Rustam Khan, Clinical Technician (Cardiology) BPS-12, MTI MMM Teaching Hospital D.I. Khan was informed vide letter No. SO(Housing)/HD/1-19/Gen/2023 dated 10th May 2024 to appear for Personal Hearing and recording of her statement Annexure-X). She, alongwith her credentials and valid Identity Card, appeared for Personal Hearing on 15-05-2024 at 2:00 PM accompanied by her spouse. She signed the attendance Sheet (Annexure-XI). During proceedings, a questionnaire was also handed over to her with the directions to submit filled/signed replies to the questionnaire, (Annexure-XII) which she submitted. During interview, Ms. Irum Noreen informed that she herself had submitted an application for her transfer to MTI DI Khan and that she had also submitted applications for NOC's from both the MTI's as per required rules and procedurc. However, at the outset of the inquiry, i.e; as soon as she signed the attendance sheet, it was observed that both her signatures in the application and the attendance sheet do not match. When confronted with this situation, she changed her statement and disclosed that she had not submitted any application for her transfer and it was one of her relatives named Raja Asghar Ali, who had taken care of her transfer process, as she was busy with her duties and taking care of her kid during that time. She also disclosed that she had not interacted with any officer of the DGHS office. She was also confronted with her original application dated 27-3-2024, in which, she has claimed that she had all the NOC's with her but the issuance dates of those NOC's were later than her claim. To this she had no plausible answer and simply exclaimed that she did not know. She then added that she got the transfer orders only as one piece of paper and that her uncle Mr. Raja Asghar Ali may be in the knowledge of things. She seemed perturbed and was constantly saying that her transfer was as per rules and procedure and need not be questioned. Her reply to questionnaire in annotated form is as under.

Question # 1. What is your name, domicile, district, educational qualification and joining date of services?

Reply. My name is Irum Noreen, my domicile is of District Dera Ismail Khan, and my education qualification is FSC and Cardiology Diploma in ECG.

Question # 2. When you submitted application for transfer and explain reasons, if any?

Reply. Submitted application on my behalf from my uncle. I got married in DI Khan. I have a daughter 4 years old, therefore I submitted my application on humanitarian grounds for transfer.

Question # 3. Whether you complained against your transfer related matter to any forum regarding money demanded from you for the subject transfer?

Reply. No.

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S. B. Khan
Section Officer
Health Department
Muzher Pakhtunkhwa
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Muzher Pakhtunkhwa

Question # 4. Whether the orders canceled ab-initio was with your willingness or otherwise?

Reply: No. I am not aware that my orders are being cancelled and till date have not received in the hospital. Its my earnest request to keep me posted in District DI Khan. It has been canceled without by my prior willingness.

Question # 5. Whether you signed the application, submitted for your transfer to DG Health Services?

Reply: No but application is submitted on my behalf by my uncle.

Question # 6. Whether you applied for NOCs from both the MTIs?

Reply: Yes, I have applied for both NOCs and accordingly issued by hospitals.

Question # 7. Did you part with some money as illegal gratification for your subject matter transfer?

Reply: No.

After this disclosure, that it was not she but her relative Mr. Raja Asghar Ali, who moved her transfer application, he was also summoned for interview and questioning (Annexure-XIII). Raja Asghar Ali appeared before the undersigned on 16-05-2024. He was found to be a lawyer by profession and a native of district DI Khan. Raja Asghar Ali S/o Raja Naseer ud din (uncle of Ms. Irum Noreen). While appearing for personal hearing stated that he applied in the office of DGHS for the transfer of his niece from MTI Bannu to MMM DI Khan on 27.03.2024 on the grounds of her young kid facing problems because of her duty in Bannu. He also stated that he obtained NOCs from both MTIs for the processing of the transfer case as per procedure and he had neither paid any money nor provided any gift to any of the officers/officials during the processing of the transfer case (Annexure-XIV).

The accused Officer (Dr. Shaukat Ali, Ex-Director General Health Services, Peshawar) was asked to appear before the undersigned for personal hearing and recording of his statement (Annexure-XV). The accused appeared and recorded his statement in written form, which is reproduced below (Annexure-XVI).

"I am writing to clarify and provide information regarding the transfer of Ms. Irum Noreen, Female Technician BS-12. I confirm that Ms. Irum Noreen submitted an application requesting a transfer from District Bannu to District Di Khan. This application was duly received at the Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar, and was marked to the relevant Section by the appropriate authorized officer of this Directorate.

The decision-making process for such transfers involves assessing various factors, including the nature of the Job i.e. Civil Servant or otherwise, Temire, Staffing needs/NOCs from the relevant Authorities. The application was processed under established procedures and guidelines governing staff transfers. I can confirm that Ms. Irum Noreen transfer application

attested
S. Saqib Khan

RECEIVED
Director General Health Services
Khyber Pakhtunkhwa
Peshawar

[Handwritten Signature]

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

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was duly processed by the relevant section of the Directorate. The application underwent thorough review, and all codal formalities and procedural requirements were fulfilled under our established guidelines for staff transfers. After completing the necessary formalities, the Director of Human Resources (HR) reviewed the application and subsequently recommended approval based on the merits of the request and compliance with organizational protocols.

As the competent authority for Grade 12 transfers, I approved the employee's transfer order based on my authority and responsibility. No money or bribes were requested or received from the applicant during the processing of her transfer request.

As Directorate General Health Services, I am committed to upholding transparency, and fairness, and integrity in all administrative processes, including staff transfers. We strive to facilitate genuine transfer requests based on valid reasons and operational requirements".

The accused DGHS, Dr. Shaukat Ali was then questioned about the law under which he had transferred Ms. Irum Noreen. He replied that being DGHS, it was his competence to issue her transfer order. When informed that under the MTI Act of 2015, he cannot issue those orders, he had no plausible answer and simply stated that cases like such are put to him and the officers in the lower chain of command take care of these regulatory niceties. He reasserted that the orders were issued after observing all codal formalities. He was asked that, if the orders were as per rules and procedure then why were those withdrawn as "void ab-initio" subsequently? To this he had no satisfactory answer.

iii. Analysis And Findings About The Administrative Setup Of The DGHS Office Dealing With Cases Of Transfers And Examining Available Records As Well As The Relevant Law And Legal Procedure For The Transfer.

The analysis of KP MTI Reform Act 2015, shows that Section 16 (3B) of the same Act governs the instant transfer. The Section reads as follows:

"A civil servant at the request of the board may be sent on deputation to a Medical Teaching Institution by the Government. For civil servants on deputation to the Medical Teaching Institution, pension contributions shall be made by the Medical Teaching Institution. The deputation of a civil servant to a Medical Teaching Institution may be terminated by the Board at any time without assigning any reason thereof and such civil servant services shall revert to the Govt. immediately upon such termination being notified by the Board".

A careful reading of the law provides, that only the Board of Governors of an MTI will first terminate the services of a civil servant in that particular MTI. After termination of services, that civil servant will revert to his government service. Then his/her services can be assigned to another MTI on deputation basis. For that deputation, the competent authority is the government i.e; the Chief Minister

attested
S. Sajid Khan

NOTIFIED
Adviser to Government
Supreme Court of Pakistan
for Govt. of Khyber Pakhtunkhwa

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Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

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his cabinet. The MTI's are autonomous institutions and transferring technical people from those institutions requires certain protocols to be followed. Also these institutions do not fall under the ambit of DGHS. The transfers powers between MTI's have been self assumed by the DGHS on the basis of NOC's, issued by the Secretary to the Board of Governors of MTI. No BOG meeting was called and the issuance of NOC was done by Secretary BOG on personal basis.

The above shows that for the instant transfer, this specific section has been violated. Approval from Board of Governors of both the MTI's is a prerequisite for the transfer. For the transfer itself, the competent forum is the government and not the DGHS. However, such transfers have been done by DGHS on multiple occasions. The administrative department has not bothered to take notice of this irregularity showing failure of administrative control. Despite asking for providing a detailed record of the meeting/reference of BOG while considering the NOC, the MTI Bannu and D.I. Khan provided only copies of the NOC signed by the Secretary and no record of background details was provided indicating tailored nature of the process and obtaining NOC as an afterthought.

It was also noticed from inspection of the record that the claimed application for transfer submitted on 27.03.2024 was marked by the DD (Paramedics) to AD (Fawad) showing that the DD (Paramedics) either had no knowledge of the designation of the concerned AD or that he had acted because of informal arrangements within the DGHS office (Annexure-XVII). The officer who marked that letter in such a manner was questioned but he had no plausible reason for his act, indicating processing of such cases at a personal level under the informal arrangements between the chain of command.

The Non-adherence by the Ex DGHS to the recommended process of sending civil servants on deputation to MTIs at the request of the BOG without anyone pointing to the legal lacuna was made only possible through the informal nature of the functioning of the DGHS Office. This would not have been possible if the Administrative Department had refrained from posting junior officers on key positions in the DGHS office and facilitating informal arrangements to unscrupulously act in a legal void i.e. transfers between MTI's.

The diary/dispatch register containing the entries of the claimed application, dated 27th March 2024 was minutely examined and it was found that the same has been tampered with. Visible cutting/overwriting and different handwriting patterns, indicating manipulation in the entry record at a later stage, were found (Annexure-XVIII).

*attested
S. B. Khan*

ATTESTED

[Signature]
Administrative Department
Supreme Court of Pakistan
Faislaabad
Province of Punjab, Pakistan

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The AD HR having presence at DG Health Office and supposed to deal with such transfers has been shown "Away" on the Note Part of the file. However, upon inquiry into his absence, it was found that he was very much present on that day and had been purposely marked "AWAY". This showed that the record had been tailored afterward in haste (Annexure-XIX) and that this officer chose not to be part of the record fabrication.

The NOCs provided contain the issuance dates of 28.03.2024 and 01.04.2024 respectively however, the date of submission of application is 27/03/2024. In the application, Ms. Irum Noreen contends that she had all NOCs with her. This was not the case. Her claim was fake. The application was later reproduction and made a part of the record.

The speed of processing of the transfer application is also astonishing as it was submitted on 27.03.2024, put up on 29.03.2024, and a transfer order was issued on 02.04.2024, with two days of official holidays in between.

Amazingly, during all this, the administrative department has been a silent spectator and has visibly omitted to perform its administrative role. The Administrative department has posted Junior officers on key positions to DGHS office resulting in favouritism and providing conducive atmosphere for the informal arrangements to work in DGHS office. This dangerous arrangement must have its effects on other functions and working of the DGHS office and needs to be looked into.

While analyzing the applications of Ms. Irum Noreen that she submitted to both MTI Bannu and MTI DI khan, it was observed that there are signatures of six different officials and officers including Ms. Irum Noreen but not a single one has put any date anywhere. This is astonishing. In addition, this piece of record was received in the office of the undersigned on Tuesday 21-05-2024, when the proceedings were about to be concluded. This amply shows that the NOC generated in MTI Bannu is fabricated and tailored to the needs of the accused. Connivance between the accused Ex-DGHS and the officials of MTI Bannu is thus established beyond doubt. The same has also been done by MTI DI khan, though they have put some dates here and there. In both instances of NOC's, no legal procedure of approval from BOG's of these MTI's has been followed. The Secretaries of both MTI's have acted hand in glove with the Ex- DGHS to coverup the faults and trick the undersigned as Inquiry officer, but have miserably failed.

*Attested
S. J. Khan*

[Handwritten Signature]

Page 7 | 8

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

ATTESTED
Advocate General
Supreme Court Of Pakistan
For Govt. Of K.P.K. Peshawar

CONCLUSION AND RECOMMENDATIONS.

After recording the statements and examining the record at hand, it is established that a tailored process of application and NOC's was adopted as a coverup. The record provided by DGHS proves that the transfer application was submitted on 27.03.2024, while the NOCs were issued by Secretary BOG MTI DI Khan and Medical Director MTI Bannu on 28.03.2024 & 01.04.2024 respectively. This shows that the transfer order was a single piece of paper issued by the DGHS office under his signatures wherein the due process of application and obtaining of NOCs has been clumsily adopted later on and in haste as fodder for the probe and to fill the procedural void.

Deviation from the procedure under the MTI Act concerning the transfer in Section 16 (3B) of the Khyber Pakhtunkhwa MTI Reform 2015 has been committed, not only in the instant transfer but also in other transfers of the same nature as well. The role of the administrative department as a silent spectator in the whole affairs raises questions about its administrative competence and control. The running of the DGHS office in an informal manner and the administrative department's role of posting officers to the DGHS office to facilitate that informal arrangement for the Ex DGHS are acts of omission and commission and need a separate detailed probe.

Violation of rules and procedures and the fabrication and tailoring of record at a later stage with multiple lacunae can be seen in no other light than the money changing hands and illegal gratification accepted at higher level in the transfer of Ms. Irum Noreen d/o Rustam Khan from MTI Bannu to MTI DI Khan.

The Administrative Department to avoid influence in the inquiry proceedings, suspended the accused Officer, Dr. Shaukat Ali, Ex DGHS, apparently for the inefficiency and misconduct in dispensing the assigned responsibilities and trespassing into the domain of MTIs.

In light of the above conclusions and recommendations, further course of action may be taken under the E&D Rules 2011.

Amber Ali Khan
30/5/24
Dr. Amber Ali Khan
(Inquiry Officer)
Secretary Housing
Khyber Pakhtunkhwa

Attested
S. Bajwa

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

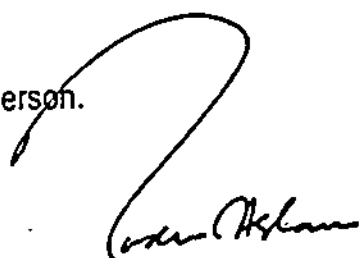
ATTESTED
[Signature]
Advocate on Record
Supreme Court of Pakistan
For Court of K.P.K. Peshawar


CHARGE SHEET

I, Nadeem Aslam Chaudhary, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, do hereby Charge you Dr. Shaukat Ali, Management Cadre (BS-20), the then Director General Health Services, Khyber Pakhtunkhwa (Now waiting for posting) as follows: -

That you, while posted as Director General, Provincial Health Services Academy, Peshawar, committed the following irregularities:-

- i. That you, transferred Miss. Irum Noreen D/o Rustan Khan, Clinical Technician (Cardiology) BS-12 from MTI-DHQ Teaching Hospital Bannu to MTI-MMM D.I.Khan by making tailoring process of application and getting of NOCs from the concerned BoG MTI D.I.Khan and Medical Director MTI Bannu have issued NOCs on 28.03.2024 & 01.04.2024 respectively.
 - ii. That you violated Section-16(3B) of the Khyber Pakhtunkhwa Medical Teaching Institution Act, 2015 by issuing transfer order of Miss. Irum Noreen D/o Rustan Khan, Clinical Technician (Cardiology) BS-12 under your signature wherein the due process of application and obtaining the NOCs has been clumsily adopted later-on and in haste as fodder for the probe and to fill the procedural void.
2. By reasons of the above, you appear to be guilty of "Misconduct" under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.
 3. You are, therefore, required to submitted your written defense within ten (10) days and not more than fourteen (14) days of the receipt of this Charge Sheet to the Inquiry Officer/ Inquiry Committee as the case may be.
 4. Your written defense, if any, should reach the Inquiry Officer/ Committee within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
 5. Intimate whether you desire to be heard in person.
 6. A Statement of Allegation is enclosed.


(NADEEM ASLAM CHAUDHARY)
CHIEF SECRETARY
KHYBER PAKHTUNKHWA


Dr. Shaukat Ali (Lit-II)
Health Department
Peshawar
Khyber Pakhtunkhwa

Dr. Shaukat Ali, Management Cadre (BS-20),
The then Director General Health Services, Khyber Pakhtunkhwa (Now waiting for posting)

DISCIPLINARY ACTION

I, Nadeem Aslam Chaudhary, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that, Dr. Shaukat Ali, Management Cadre (BS-20), the then Director General Health Services, Khyber Pakhtunkhwa (Now waiting for posting), has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of rules-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. That he, transferred Miss. Irum Noreen D/o Rustan Khan, Clinical Technician (Cardiology) BS-12 from MTI-DHQ Teaching Hospital Bannu to MTI-MMM D.I.Khan by making tailoring process of application and getting of NOCs from the concerned BoG MTI D.I.Khan and Medical Director MTI Bannu have issued NOCs on 28.03.2024 & 01.04.2024 respectively.
- ii. That he violated Section-16(3B) of the Khyber Pakhtunkhwa Medical Teaching Institution Act, 2015 by issuing transfer order of Miss. Irum Noreen D/o Rustan Khan, Clinical Technician (Cardiology) BS-12 under his signature wherein the due process of application and obtaining the NOCs has been clumsily adopted later-on and in haste as fodder for the probe and to fill the procedural void.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rules 10(1)(a) of the ibid rules:

- i. Mian Muhammad (PGC SG-21) Chairman By
- ii. Dr Ubaid Hussain, MC (BS-20) M.B.

3. The inquiry officer/inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within sixty (60) days of receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.

(NADEEM ASLAM CHAUDHARY)
CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-IV

Mr. Justice Yahya Afridi
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed

C.P.L.A. 2231/2024

(Against the judgment dated 15.05.2024 passed by the Peshawar High Court, Peshawar in WP No.2268-P/2024)

Dr. Shaukat Ali ...Petitioner(s)

Versus

Government of Khyber Pakhtunkhwa, ...Respondent(s)
through Chief Secretary, Peshawar and
others

For the Petitioner(s) : Mr. Shah Khawar, ASC

For the Respondent(s) : Syed Kosar Ali Shah, Addl. AG KP
Zia Ullah, DS Health

Date of Hearing : 25.09.2024

ORDER

Yahya Afridi, J: Through the instant petition, the petitioner has called in question the impugned judgment dated 15.05.2024 of the Peshawar High Court, Peshawar whereby the Writ Petition No.2268-P of 2024 filed by the petitioner was dismissed.

2. The learned counsel for the petitioner contends that the suspension order issued against the petitioner, without the initiation of a formal inquiry, as required by the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, is *void ab initio*. Consequently, the petitioner should be reinstated to the position and the post he held at the time the impugned suspension order was issued.

Attested
S. Iqbal Khan

Section Officer (I.Lit-II)
Health Department
Khyber Pakhtunkhwa

Attested
Mr. Hassan Khalid
Circuit Associate
Supreme Court of Pakistan

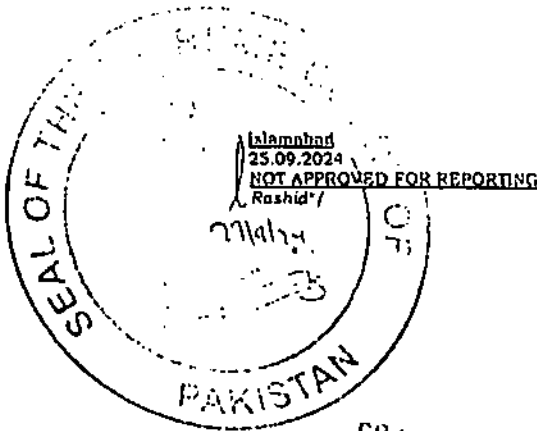
3. The learned Additional Advocate General, Khyber Pakhtunkhwa, produced a letter dated 24.09.2024 of the Government of Khyber Pakhtunkhwa, Health Department, wherein it was stated that the suspension of the petitioner in the present case was not extended.

4. In light of the above, we find that the grievance of the petitioner has been substantially addressed, rendering the matter infructuous. Accordingly, this petition is hereby disposed of in the aforementioned terms. However, the petitioner may, if so advised, pursue any other appropriate remedy available to him under the law.

Sd/-J
Sd/-J
Sd/-J

Certified to be true copy

[Signature]
Ms. Noreen Khalid
Sr. Court Associate
Supreme Court of Pakistan



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GR No.	128807/10
Date of Filing	27.9.24
Case No.	6
Page No.	5
Court	2
Date of Disposal	8.10.24
Date of Judgment	30.9.24
Completed by	1-10-24
Received by	<i>[Signature]</i> Ahmad

Attested
S. Baz Khan

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa