

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1379/2024.

Dr. Aiman Wazir (Appellant)

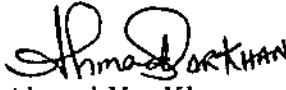
VS

Government of Khyber Pakhtunkhwa through Chief Secretary and Others(Respondents)

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DEPONENT


Ahmad Yar Khan
Assistant Director (Lit)

(1)
74

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1379/2024.

Dr. Aiman Wazir (Appellant)

VS

Government of Khyber Pakhtunkhwa through Chief Secretary and Others
.....(Respondents)

PARA-WISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS NO.1 to 3

Respectfully Sheweth,

Khyber Pakhtunkhwa
Service Tribunal

PRELIMINARY OBJECTIONS.

Diary No. 17281

Dated 28-10-24

1. That the appellant has got no locus standi to file the instant service appeal.
2. That no discrimination / injustice has been done to the appellant.
3. That the instant service appeal is bad in the eye of law.
4. That the appellant has not come to this Tribunal with cleaned hands and has concealed material as well as legal facts.
5. The appeal is based on distortion of facts and is not tenable in eye of law.
6. That the appellant has been estopped by his own conduct to file the service appeal.
7. The present service appeal is based upon malicious/vexations and frivolous grounds.
8. That the service appeal is based on conjecture and surmises.
9. That the service appeal is not maintainable in its present form.
10. That the service appeal is bad for mis-joinder and non-joinder of the necessary parties.
11. That the appellant has filed the present service appeal contrary to Law and facts.
12. That proper procedure was adopted by the competent authority while passing the removal order of the appellant.
13. That section 18 of the Civil Servants Act, 1973 is clear regarding leave of the Civil Servant. It provides that "A civil Servant shall be allowed leave in accordance with the leave rules applicable to him, provided that the grant of leave depend on the exigencies of service and be at the discretion of the competent authority". The appellant has not been sanctioned any type of leave by the competent authority in fact her application for leave was rejected and she was accordingly informed about the such

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rejection with the direction to assume the duty immediately but she did not assume the duties and remained absent.

14. That the Competent Authority after completing all the codal formality imposed major penalty of "Removal from Services" upon the appellant.

15. That Fundamental Rule 67 provided that leave could not be claimed as of right and an application for leave should not be anticipated as grant of leave. Rules, Regulations and office procedure provided that a civil servant requiring leave was supposed to apply formally for it and as a matter of principle he could not and should not absent herself from office prior to sanction of leave. Mere submitting an application for leave ipso facto could not be construed to be sanction of leave. Prospective presumption had to be based on some legal ground. Civil Servant could leave her headquarter/ office only with prior approval of the competent Authority in order to avoid subsequent complications.

16. That the service appeal is time barred and warrants dismissal as the services appeal.

ON FACTS.

1. Para 1 of the Service Appeal pertains to record.
2. Para 2 of the Service Appeal is correct to the extent that the appellant was recommended by Khyber Pakhtunkhwa Public Service Commission as WMO (Women Medical Officer)/DPWO Technical/Instructor (Tech) BPS-17 and was posted in Bannu.
3. Para 3 of the Service Appeal pertains to record.
4. Para 4 of the Service Appeal is correct to the extent that the appellant has moved an application for extra ordinary leave without pay but the same was regretted on 18-02-2021 vide letter No. SOE(PWD)1-189/2020/PF/21-24 (Annex-A). Whereas rule 12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 provides that *"Extraordinary leave may be granted on any ground upto a maximum period of five years at a time provided that that the civil servant to whom such leave is granted has been in continues service for a period not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave*

sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee. Therefore, the appellant cannot remain absent from her official duties at her own will. Detail has also been given in para-15 of the preliminary objection.

- 5. Para 5 of the Service Appeal is correct to the extent that after rejecting her leave application absence notices were issued to the appellant at her home address.
- 6. Para 6 of the Service Appeal pertains to record.
- 7. Para 7 of the Service Appeal is correct to the extent that absence from duty has been proved against the appellant however, the de-novo inquiry was order to be conducted.
- 8. Para 8 of the Service Appeal pertains to record.
- 9. Para 9 of the Service Appeal pertains to record.
- 10. Para 10 of the Service Appeal pertains to record.
- 11. Para 11 of the Service Appeal pertains to record.
- 12. Para 12 of the Service Appeal is incorrect. The competent authority after completing all the codal formalities issued a final show cause notice to the appellant.
- 13. Para 13 of the Service Appeal is correct to the extent that the competent authority i.e. Chief Secretary Khyber Pakhtunkhwa after having considered the charges, evidence on record, findings of the inquiry officers, the reply of the appellant to the show cause and hearing her through hearing officers on 29-02-2024 and 07-03-2024 and exercising his powers under rule-4 (1)(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) rules 2011, has imposed major penalty "Removal from Service". (copies of Statement of Allegation, charge sheet, reply to charge sheet, Inquiry Reports, Show Cause, Reply to Show Cause, Personal Hearing, and Removal Order are attached as **Annex-B, Annex-C, Annex-D, Annex-E&F, Annex-G, Annex-H, Annex-I, Annex-J**)
- 14. Para 14 of the Service Appeal pertains to record. The reply on the grounds is as under.

ON GROUNDS

- A. Para-A of the Service Appeal is incorrect. The appellant has been removed from service by keeping the norms of justice, facts and record. The leave application was regretted by

the competent authority and directed the respondent to assume the duty immediately but the appellant had not taken into notice such leave application rejection and remained absent. As far as rule 12 of revised leave rule is concerned it is the discretion of the leave sanction authority, who has to keep all the exigencies of the service. Detail reply has also been given in Para-13 & 15 of the preliminary objections as well as in Para-4 of the facts.

- B. Para-B of the Service Appeal is incorrect. The appellant was time and again directed to resume duties through absence Notices, but she did not resume her duties. Moreover, the job nature in population welfare department is totally different from health department therefore specializing in particular field would not serve the purpose of the department.
- C. Para-C of the Service Appeal is incorrect. The leave request of the appellant on the ground that section-7 of the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 relates to doctors selected in Health Department and there is no concept for specialization of doctors selected in Population Welfare Department. The section 2(1) (b & d) of the Act stipulates that;
 - (b) "doctor" means a doctor serving in the health facility.
 - (d) "health facility" means all health facilities established and managed by the provincial Government to provide medical facilities to general public.
- D. Para-D of the Service Appeal is incorrect. The competent authority has completed all the codal formalities before issuing the Removal order. Detail reply has been given in Para-13 of the facts.
- E. Para-E of the Service Appeal is incorrect. The competent authority has completed all the codal formalities required to be completed under the rules.
- F. Para-F of the Service Appeal is incorrect. The removal order was passed after considering the inquiries of the both officers. Detail reply is given in Para-13 of the facts.
- G. Para-G of the Service Appeal is incorrect. The entire matter is not about the inquiries it is about the justice which is to be done to the appellant. The competent authority after considering both inquiries and evidence on record passed a removal order.
- H. Para-H of the Service Appeal is incorrect. Detail reply is given in Para-13 of the facts.

- I. Para-I of the Service Appeal is incorrect. The competent authority has validly issued a removal order by considering the entire facts and evidence on record and it is not against the spirit of Denovo Inquiry.
- J. Para-J of the Service Appeal is incorrect. The appellant herself admitted absence from duty even in the present service appeal. She has submitted arrival report and then remained absent. The rest of the Para is based on conjuncture and surmises.
- K. Para-K of the Service Appeal is incorrect. The competent authority has passed an order after considering the entire facts of both inquiries.
- L. Para-L of the Service Appeal is incorrect. Already replied in Para-G of the grounds.
- M. Para-M of the Service Appeal is incorrect. The competent authority has not declared the first inquiry report as illegal and has its legal effect in passing any order.
- N. Para-N of the Service Appeal is incorrect. The competent authority has passed the order keeping in view the entire evidence brought on record in both inquiries.
- O. Para-O of the Service Appeal is incorrect. The complete proceeding has taken in a very transparent manner and nothing illegal has been committed. The formalities laid down by the law and rules have been completed before passing an order of removal of the appellant.
- P. Para-P of the Service Appeal is incorrect. The state of Pakistan and its Federation Units knows better public interest at large and doing it as per Law. Misinterpretation without reference to the contexts will give way to one according to her wishes to articulate. Furthermore, not even a single right of the appellant has been violated nor the respondents acted against the Law.
- Q. Para-Q of the Service Appeal is incorrect. The case of the appellant is totally different from the ones mentioned. As she has applied for the leave under the "Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011" which is not applicable to the appellant. Detail reply has already been given in Para-C of the Grounds.

PRAYER:-

Keeping in view the above-mentioned comment/reply, it is most humbly prayed that the instant service appeal of the appellant may kindly be dismissed with cost.



IMAD ALI LOHANI
Secretary
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2

2A/K



22/10/24

AYESHA IHSAN
Director General
Population Welfare Khyber Pakhtunkhwa
Respondent No. 3
Director General
Population Welfare Deptt:
Govt. of Khyber Pakhtunkhwa
Peshawar.



CHIEF SECRETARY
Chief Secretary
Government of Khyber Pakhtunkhwa
Respondent No.1

through
IMAD ALI LOHANI
Secretary Population Welfare
Department.

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**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
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VS

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.....(Respondents)

AFFIDAVIT

I, Imad Ali Lohani Secretary Population Welfare Department do solemnly affirm and declare that the contents of Para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Honorable Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense has been struck off.

IMAD ALI LOHANI
Secretary to Govt. of Khyber Pakhtunkhwa
Population Welfare Department
(Respondent No.2)

ATTESTED



28/10/2024



GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT

02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

No. SOE (PWD) 1-189/2020/PF/21-24.
Dated Peshawar the 18th February, 2021

To


Dr. Aiman Wazir,
Women Medical Officer,
I/c RHSC-A, Bannu

Subject: - APPLICATION FOR STUDY / EXTRAORDINARY LEAVE

I am directed to refer to your application dated 11-02-2021 on the subject noted above and to state that the case has been thoroughly examined in light of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 and it has been found that your request is not covered under the Civil Servants Revised Leave Rules, 1981, as under Rule-12 of Rules ibid. EOL may be granted on any ground upto a maximum period of five (05) years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten (10) years and under Section-7 of the KP (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011, any doctor selected or permitted for postgraduate medical training shall be treated on leave without pay and may be entitled only for stipend fixed by government from time to time for such training.

2. It is added that Section-7 of the Regulatory Act, 2011 relates to the Doctors selected in the Health Department and there is no concept for specialization of doctors selected in PWD.

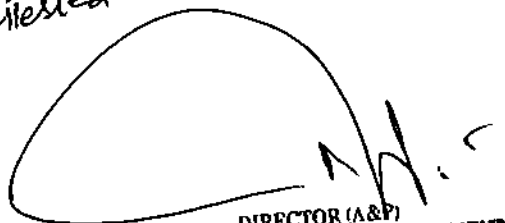
3. In light of the above, you are, therefore, directed to attend your official duties, as your case is not covered under the KP Civil Servants Revised Leave Rules, 1981, failing which disciplinary action will be initiated against you.


(LAL SAEED KHATTAK)
SECTION OFFICER (ESTT)

Copy to the: -

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
2. District Population Welfare Officer, Bannu.
3. PS to Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.

Attested


DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA


SECTION OFFICER (ESTT)

(21)

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A-21V

DISCIPLINARY ACTION

I, Dr. Shehzad Khan Bangash, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, am of the opinion that Dr. Aiman Wazir (BS-17), Women Medical Officer RHSC-A Bannu, Population Welfare Department has rendered herself liable to be proceeded against, as she committed the following acts/omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011:

STATEMENT OF ALLEGATIONS

That you, while posted as Women Medical Officer RHSC-A Bannu, Population Welfare Department, committed the following irregularities:

- (i) That you were appointed as Women Medical Officer / Deputy District Population Welfare Officer (Tech) / Instructor (Tech) (BPS-17) vide Government of Khyber Pakhtunkhwa Population Welfare Department Notification No. SOE(PWD)4-64/2021 dated 03-02-2021 and was posted as WMO (BPS-17) in RHSC-A Bannu.
- (ii) That instead of joining your duties, you submitted an application on 11-02-2021 for grant of study leave / extra ordinary leave from 11-02-2021 to 06-08-2024, which was regretted not covered under the Rules vide letter No. SOE(PWD)1-189/2020PF/21-24 dated 18-02-2021 and you were directed to attend your official duty, but you failed to resume your duties.
- (iii) That a notice was issued vide NO. SOE(PWD)1-189/2020/PF dated 05-04-2022 on your home address with the direction to join duty within 15 days in response you submitted an application for transfer from District Population Welfare Office Bannu to District Population Welfare Office Peshawar.
- (iv) That you are absent from your duties w.e.f 10-02-2021 till date.

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

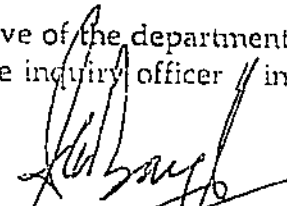
- i. Ms. Mishah Riaz
- ii. DS, PHED
- iii. _____

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 thirty days of the 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.

Attested


DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA


(Dr. Shehzad Khan Bangash)
Chief Secretary
Khyber Pakhtunkhwa
Competent Authority

(10) (10) (10)
A-XIII

CHARGE SHEET

I, Dr. Shehzad Khan Bangash, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Dr. Aiman Wazir (BS-17), Women Medical Officer RHSC-A Bannu, Population Welfare Department as follows:

02. That you, while posted as Women Medical Officer RHSC-A Bannu, Population Welfare Department, committed the following irregularities:

- (i) That you were appointed as Women Medical Officer / Deputy District Population Welfare Officer (Tech) / Instructor (Tech) (BPS-17) vide Government of Khyber Pakhtunkhwa Population Welfare Department Notification No. SOE(PWD)4-64/2021 dated 03-02-2021 and was posted as WMO (BPS-17) in RHSC-A Bannu.
- (ii) That instead of joining your duties, you submitted an application on 11-02-2021 for grant of study leave / extra ordinary leave from 11-02-2021 to 06-08-2024, which was regretted not covered under the Rules vide letter No. SOE(PWD)1-189/2020FP/21-24 dated 18-02-2021 and you were directed to attend your official duty, but you failed to resume your duties.
- (iii) That a notice was issued vide NO. SOE(PWD)1-189/2020/PF dated 05-04-2022 on your home address with the direction to join duty within 15 days in response you submitted an application for transfer from District Population Welfare Office Bannu to District Population Welfare Office Peshawar.
- (iv) That you are absent from your duties w.e.f 10-02-2021 till date.

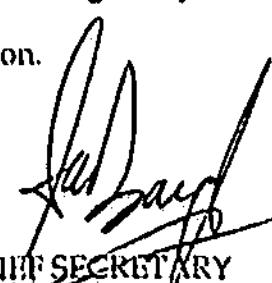
03. By reasons of the above, you appear to be guilty of mis-conduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

04. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the inquiry officer/inquiry committee as the case may be.

05. Your written defence, if any, should reach the inquiry officer/inquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.


06. Intimate whether you desire to be heard in person.

07. A statement of allegations is enclosed.


CHIEF SECRETARY
Khyber Pakhtunkhwa
Competent Authority

Dr. Aiman Wazir,
Women Medical Officer
RHSC-A Bannu

Attested


OFFICE FOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR, KHYBER PAKHTUNKHWA

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F

Amir

To

Ms. Misbah Riaz (PMS-18)
Deputy Secretary,
Public Health Engineering Department
Khyber Pakhtunkhwa, Peshawar.

Subject: REPLY REGARDING DISCIPLINARY AGAINST DR. AIMAN WAZIR, WOMEN MEDICAL OFFICER (BPS-17) RHSC-A, BANNU

Reference: No.SOE (PWD) 1-189/2018/PF/ Dated: 30th June, 2022


Respected Madam, reply to point (ii) in charge sheet. I am humbly stating that I joined the duties on 10th February, 2021 Charge Assumption report attached please. Thereafter on 11th Feb, 2021. I applied for Extraordinary leave under the same rules under which EOL is granted to civil servants in respect of FCPS-II training in my case, leave granted notifications attached. As I am already undergoing FCPS-II training since 2019 and same was also intimated to the department.

Respected madam reply to point (iii) in charge sheet, I requested the transfer from Bannu to Peshawar on medical grounds and at that time I was admitted in the hospital a complete medical profile along with doctor reports and abstention from distant travelling (due to pregnancy) as prescribed by doctors was sent to the Population and welfare department. That request was made on medical grounds.

Lastly, respected madam, I am into 37th week of my pregnancy and during my pregnancy I faced several complications as I have suffered miscarriage (report attached) before because of which I was advised for extra care and it is a precious pregnancy, all reports were sent to the department concerned. Moreover, I am in the 4th year of my FCPS-II training and in the final days of my pregnancy before delivery (scan report attached). I therefore request to please be exonerated from this inquiry and my leave application reviewed. Moreover, I am also in the ambit of maternity leave as my Expected Date of Delivery is 1st August, 2022. I am also requesting for maternity leave of 90 days.

I request to all concerned to please exonerate me from this inquiry on humanitarian grounds as well and I would love to render my services to the PWD department in true spirit. Thank you

Attested



Yours sincerely,
Dr. Aiman Wazir

DIRECTOR (G&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR, KHYBER PAKHTUNKHWA

INQUIRY REPORT

Subject: INQUIRY INTO UNAUTHORISED ABSENCE FROM DUTY BY DR. AIMAN WAZIR, WOMEN MEDICAL OFFICER (BS-17), RHSC-A, BANNU.

The undersigned has been nominated as an inquiry officer to conduct inquiry into the allegations against Dr. Aiman Wazir, women Medical Officer (BS-17, RHSC-A, Bannu vide letter No. SOE(PWD)1-189/2018/PF/8500-04 dated 30th June, 2022 (Annex-I).

BACKGROUND:

Population Welfare Department moved a Note for Chief Secretary Khyber Pakhtunkhwa regarding willful absence of Dr. Aiman Wazir, WMO (BS-17), Bannu w.e.f 10-02-2021, i.e from the date of the charge assumption till date. Brief history of the case is as under:

- i. Dr. Aiman Wazir was appointed against the post of WMO/Deputy District Population Welfare Officer (Technical)/Instructor (Technical) (BS-17) vide Notification No. SOE(PWD)4-64/2021 dated 03-02-2021 (Annex-II).
- ii. She assumed the charge of the post on 10-02-2021 (F.N) (Annex-III).
- iii. After assumption of charge in DPW office Bannu, she did not join the duty till date as per report of District Population Welfare Officer, Bannu dated 15-08-2021 (Annex-IV).
- iv. Instead, she requested for leave without pay as she was undergoing training in H.M.C Peshawar since 2019 which is going to complete in 2024 (Annex-V).
- v. The request was not acceded to and she was informed to join the duties forthwith by explaining that the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 relates to the doctors selected in the Health Department and there is no concept of specialization of doctors selected in population Welfare Department (Annex-VI).
- vi. An absence notice was also served upon her with the direction to report for duty within fifteen days (Annex-VII).
- vii. In reply to the absence notice, she requested to transfer her to Peshawar due to the reasons that her husband is a Civil Servant bearing domicile of District Peshawar. And she is working as Trainee Medical Officer (4th year) in HMC. Furthermore, she is pregnant and the doctor has advised her to avoid long travels (Annex-VIII).
- viii. However, Population Welfare Department has recommended Chief Secretary Khyber Pakhtunkhwa to initiate disciplinary proceedings against the doctor concerned under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (para 21/N of Note for Chief Secretary Khyber Pakhtunkhwa) (Annex-IX).

[Handwritten signature]

Attended

[Large handwritten signature]

POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA

PROCEEDINGS:

Dr. Alman Wazir was directed to appear in the office of the undersigned on 6th July 2022 along with the written statement (Annex-X). She visited the office on the due date but she furnished the written statement on 18th July 2022. (Annex-XI).

WRITTEN STATEMENT OF DR. AIMAN WAZIR:

In the written statement, Dr. Alman Wazir has submitted the following with the request that she may be exonerated from the inquiry:

1. She requested for Extra ordinary leave to complete the FCPS training. She has also attached the Notifications of other doctors for EOL, however, they all pertain to Health Department (Annex-XII).
2. She requested for her transfer from Bannu to Peshawar on Medical grounds.
3. She has further stated that she is in the 4th year of FCPS-II training and in the final days of the pregnancy and has requested for maternity leave of 90 days w.e.f 1st August 2022 (Reports at Annex-XIII).
4. She during the inquiry also informed that she intends to continue her TMO ship in HMC Peshawar, which is going to end in 2024.

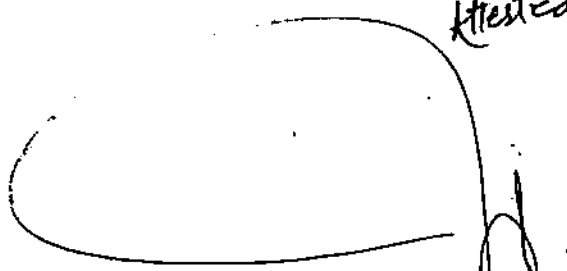
FINDINGS:

On hearing the accused officer, perusal of the written statement and the record provided by the department, it is ascertained that her unwarranted absence from duty stands proved. She was supposed to join her duty when her request for leave was regretted, which she did not.


RECOMMENDATIONS:

In light of the above mentioned facts it is recommended that major penalty of Removal from service may be imposed upon Dr. Alman Wazir, WMO, RHSC-A, Bannu.

Attested



DEPUTY POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA



(MISBAH RIAZ)
Inquiry Officer (PMS BS-18)
Deputy Secretary,
Public Health Engineering Department

(14) (14)

Subject: DENOVO Inquiry report regarding disciplinary Action Against Dr. Alman Wazir, Women Medical Officer (WMO), BS-17, RHSC-A, Bannu

Order of Inquiry –

Population Welfare Department (PWD), Khyber Pakhtunkhwa vide letter no. SOE (PWD) 1-189/2018/PF/1051-55 dated 2nd December, 2022, appointed the undersigned as an Inquiry Officer to conduct a *De Novo* Inquiry in the subject matter (Flag-A).

Charges against the Accused as per Charge Sheet & Statement of Allegations –

The Charge Sheet and Statement of Allegation, as enclosed with the above referred to letter, stipulate the following charges against the accused (Flag-B & C):

- (1) That [she was] appointed as Women Medical Officer / Deputy District Population Welfare Officer (Tech) / Instructor (Tech), BPS-17 vide Government of Khyber Pakhtunkhwa Population Welfare Department Notification No. SOE(PWD)4-64/2021 dated 03-02-2021 and was posted as WMO (BPS-17) in RHSC-A Bannu – This Charge will be hereinafter referred to as Charge 1;
- (2) That instead of joining [her] duties, [she] submitted an application on 11-02-2021 for grant of study leave / extra ordinary leave from 11-02-2021 to 06-08-2024, which was regretted not covered under the Rules vide letter No. SOE(PWD)1-189/2020FP/21-24 dated 18-02-2021 and [she] was directed to attend [her] official duty, but [she] failed to resume [her] duties – This Charge will be hereinafter referred to as Charge 2;
- (3) That a notice was issued vide No.SOE(PWD)1-189/2020/PF dated 05-04-2022 on [her] home address with the direction to join duty within 15 days in response [she] submitted an application for transfer from District Population Welfare Office Bannu to District Population Welfare Office, Peshawar – This Charge will be hereinafter referred to as Charge 3; and,
- (4) That [she] was absent from [her] duties w.e.f 10-02-2021 till date – This Charge will be hereinafter referred to as Charge 4

Primary and Secondary Sources consulted during the Inquiry –

Overall recourse was made to the available documents on the file, the statement of the accused, the stance of the Department through the Departmental Representative, general legal instruments such as, but not limited to, the Khyber Pakhtunkhwa Leave Rules, 1981, and the special Acts, Rules including Regulatory Act, 2011.

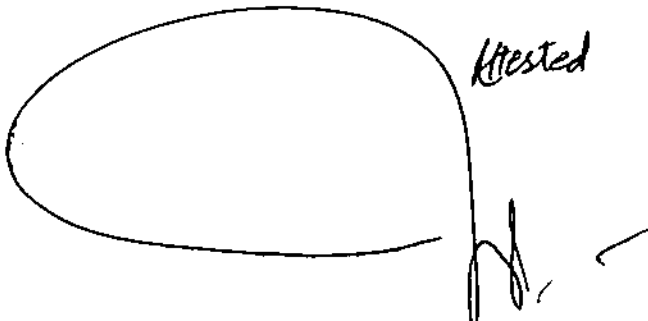
Proceedings –

The Departmental Representative as well as the accused were called to appear before the undersigned on 23rd December, 2022 (Flag-D & E).

Background: A Chronology of the Issue, measures taken so far, and the Instant Inquiry –

The accused was appointed in pursuance of the recommendations of the Public Service Commission (PSC), Khyber Pakhtunkhwa vide PWD Notification No. SOE (PWD) 4-64/2021 dated 03rd February, 2021. She is at Serial # 09 of the said Notification (Flag-F). The said Notification also enunciates Terms and Conditions of the Appointees, including the accused. Serial # vi of the terms and conditions stipulates

Attested


DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA

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that "they will be governed by [...] any other instructions which may be issued by the Government from time to time".

On 10th February, 2021, the Accused assumed the charge of post of Senior Women Medical Officer, Reproductive Health Services Center-A, Bannu, In pursuance of the above notification (Flag-G), with a copy of the same to the Director General, PWD, amongst others.

On 11th February, 2021, the Accused has submitted an application, addressed to Secretary PWD, requesting therein for "study leave/ extra ordinary leave from 11/02/2021 to 06/08/2024 as part of [her] mandatory FCPS-I training" (Flag-H). On the same date, the Accused has also submitted a separate application to the Director General, PWD with same request, also mentioning therein that her training has started in 2019 (Flag-I).

On 18th February, 2021, the accused was informed by the Section Officer (Estt), PWD that (1) her request is not covered under the Civil Servants Revised Leave Rules, 1981 and (2) "the Section 7 of the Regulatory Act, 2011 relates to the doctors selected in the Health Department and there is no concept for specialization of the doctors selected in PWD" (Flag-J). And, that she may resume her duties failing which disciplinary action will be initiated against her.

On 15th June, 2021, District Population Welfare Officer, Bannu has informed the DG PWD that (1) the accused has not resumed charge, despite being intimated that she could not be granted EOL and (2) neither the salary of the accused has been started nor taken on staff strength of the District (Flag-K).

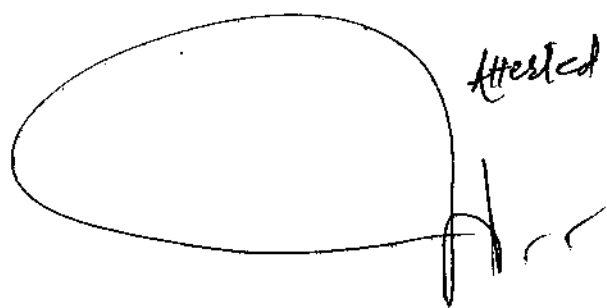
Note – The case then remains silent, as per available record, till the 21st February, 2022.

On 21st February, 2022, the Secretary PWD has moved a Note for Chief Secretary, Khyber Pakhtunkhwa, hereinafter referred to as Note, with the request that Notice be served upon the accused through registered acknowledgement on her home address for resumption of her duty (Flag-L – the Note comprises of 13 x pages, and 54 paragraphs). The same was approved by the Chief Secretary, Khyber Pakhtunkhwa on 31st March, 2022.

On 18th April, 2022, the accused replied to the Absence Notice. The reply is not as much as a reply to the Absence Notice, but request for the posting to District Peshawar, under Spouse Policy, as her husband is also a government servant posted in Peshawar (Flag-M).

On 30th June, 2022, Deputy Secretary, Public Health Engineering Department was approved as an Inquiry Officer in the instant matter, on the above mentioned Note. The Inquiry Officer called the accused for personal hearing and recording statement (Flag-N). The accused submitted the written statement on 18th July, 2022 (Flag-O). The Inquiry Officer recommended, as a consequence of the inquiry, that the penalty of Removal from Service be imposed on the accused (Flag-P).

On 17th August, 2022, on the Note a request was made for signature of Show Cause Notice by the Chief Secretary, Khyber Pakhtunkhwa. However, the observation vide paragraph-36 and 37 on it, resulted in the instant De Novo inquiry in the matter. The undersigned was approved as Inquiry Officer on the said Note on 21st November, 2022.

Attested


DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA

(6) (4)

Questions Framed - Independent of Charges & Legal Answers Thereof -

Keeping in view the overall developments in the instant case, the undersigned has framed the following questions, in addition to the Charges framed and communicated vide the Statement of Allegations:

- (1) Doctors, both MBBS and BDS, do strive to enhance/upgrade their qualifications by applying for fellowship under the College of Physicians and Surgeons Pakistan and, on selection, they have to go 4-5 years training as Trainee Medical Officers, in various tertiary care hospitals. Any recruiting authority (Health Department has made special arrangements in this regard through legislation even to permit/allow them to continue with their TMOship on selection) or Department should take due care that it is cognisant of those circumstances so the question would be whether the Department, while making request for filling the said posts, had any provision in its service rules that either TMOs may not be selected or they will be asked to discontinue their trainings, in case of their appointment;
- (2) Whether the PSC, while advertising the said posts, had barred the TMOs from applying to said post or included any condition of discontinuation of training, in case of selection;
- (3) Whether the doctors as well as facilities of the PWD are same or similar to the doctors as well as facilities of the Health Department;
- (4) Whether the Regulatory Act, 2011 is applicable to the doctors of the PWD; and,
- (5) Whether the Revised Leave Rules, 1981 has any other provision that allows EOL or not, as observed in paragraph-36 and 37 of the Note.

The answers to the questions framed are as under at same serial numbers:

- (1) No - Requisition to the PSC is placed at Flag-Q;
- (2) No - the advertisement is placed at Flag-R;
- (3) The Rules of Business, 1985, under the heading of Population Welfare Department at Serial # 02 enunciates that: "Promotion of Family Health Services clinical and non-clinical [...] through Family Welfare Centers and those reproductive Health Service Establishments located in the Provincial Government hospitals [...]" (Flag-S).

By this definition, both the services and facilities of the PWD are sub-components of the services and facilities of the Health Department in spirit, as well as legally, wherever such centers are within Provincial Government hospitals. Hence, there is a similarity. Infact, the doctors of Health Department also, in addition to other services, provide these services too.

- (4) Yes, it is explicitly applicable to the doctors of the PWD, having an Overriding Effect as per Section 9 of the said Act (Flag-T). Paragraph-11 and last 2 x lines of paragraph 14 of Note are not right to this extent. Hence, the PWD has not, initially, replied to the observation of the Establishment Department on Note regarding its applicability, and the case is, therefore, still without a conclusion; and,
- (5) Yes, it provides other modes of EOL too. Section 12 (1), in addition to the quoted part of the Rules holds that: "In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority". Moreover, Section 12 (2) states that "the maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered

Attested

DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA

continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined" (Flag-U).

Of Charges –

The nature of charges, as per Charge Sheet and Statement of Allegations, their suitability, and whether these are proved or not, with remarks are tabulated below:

TABLE-I				
Charge #	Nature	Suitability	Proved/not Proved	Remarks
Charge 1	Statement	No	Not applicable	It is a plain statement regarding appointment and further posting. NOT A CHARGE by nature.
Charge 2	Statement	No	Not applicable	It is statement, and it pertains to record. It is NOT A CHARGE .
Charge 3	Statement	No	Not applicable	It is a plain statement. And, it pertains to record of service of Notice and her reply. It is NOT A CHARGE .
Charge 4	Charge of Absence	Yes	Subjectively proved with observations below.	It is A CHARGE .

In accordance with the Table-I above, there is ONLY 1 x charge that needs establishing or otherwise i.e., the Charge of Absence.

The accused has submitted her arrival, as a result of appointment. She has further assumed the charge of the post in pursuance of the posting/transfer order, at District Bannu. Moreover, to every communique available on record, the accused has responded/replied. Lastly, the Charge should have been of willful absence, but in the instant case, the willful absence has not been mentioned in the whole case, meaning thereby that the accused may not be willfully absent but was improving her qualifications through the FCPS training. However, in the strict sense, her not joining duty in Bannu pursuant to the Order may be construed as such. Mitigating factors are, neither the pay of the accused has been issued during the whole period w.e.f 03rd February, 2021 till date (31st December, 2022), nor was she taken on the staff list of District Bannu. In the light of above, it is clear that the accused was actively responding to the letters, notices etc issued by the Department to her, and was continuously making her case for either EOL or Maternity leave¹ or transfer to District Peshawar.

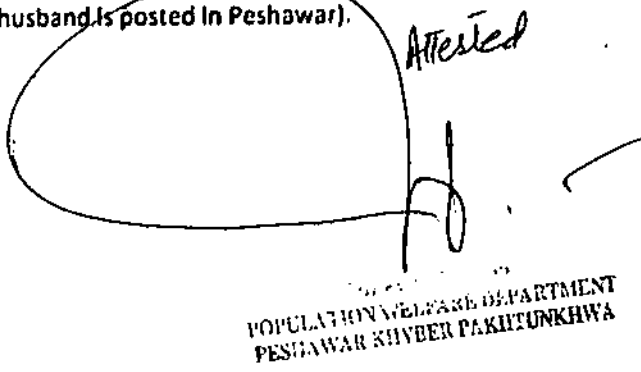
Findings –

Keeping in view all the above, the following are the findings:

- (1) There is a fine balance, on appointment of a Doctor already undergoing TMOship after qualifying FCPS Part-I, between the fact whether he/she may be allowed to undergo and

¹ The accused had a miscarriage in 2019 (documents on file). Moreover, an ultrasound report of March, 2022 suggest that she needed to avoid extensive travel – in this case from Bannu to Peshawar (as she is TMO, as well as her husband is posted in Peshawar).

Attested



POPULATION WELFARE DEPARTMENT
PESHAWAR KHAYBER PAKHTUNKHWA

complete the training or start performing duty by sacrificing the time and effort as well as opportunity to be a better doctor. The Department's regret of EOL has to be seen in that context. Moreso, when the Revised Leave Rules, 1981, have provision of 2 years EOL at any time in service.;

- (2) There was no bar on applying by TMOs for the posts, or a condition of resign/discontinuation of training in case of selection to the post;
- (3) No reference has been made by the Department to attendance register or to the biometric of the institute regarding the absence of the accused w.e.f 03rd February, 2021 till June, 2022 (the month in which such absence report was communicated by the District Population Welfare Officer, Bannu);
- (4) The request of transfer on the basis of the Spouse Policy was neither turned down nor accepted by the Department;
- (5) The accused replied to every letter, notice of the Department; and,
- (6) From the record it seems that the matter has not been placed before the Secretaries of the Department completely. That is, the relevant legal instruments have not been placed before them as well as the proposals placed before them were also not in light of these legal instruments.

Recommendations -

Foregoing in view the above, the case may be remanded back to the Department for reconsideration on the above points as ample legal remedies short of declaring her absent without leave are available including transfer or EOL without pay for remaining period of her training.

(Handwritten signature) 9/11/2023

(Aieda Qureshi)
PMS BP5-18
District Monitoring Officer,
Abbottabad.

Attested
(Handwritten signature)

DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR, KYBER PAKHTUNKHWA

SHOW CAUSE NOTICE

I, Nadeem Aslam Chaudhary, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Dr. Alman Wazir, Women Medical Officer (BS-17) RHSC-A, Bannu as follows:

- 1. (i) That consequent upon the completion of formal inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide communication No.SOG/PHED/General/1-36/2020 dated 04-07-2022; and
- (ii) on going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you have committed the following acts/omissions specified in Rule-3 of the said Rules:

- a) Guilty of misconduct.
- b) Guilty of habitually absenting yourself from duty without prior approval of leave.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of removal from service. under rule 4 of the said rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within ten (10) days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer is enclosed.

(NADEEM ASLAM CHAUDHARY)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)

Dr. Alman Wazir,
Women Medical Officer (BPS-17),
RHSC-A, Bannu.

Attested

DIRECTOR (A&M)
POPULATION WELFARE DEPARTMENT
PESHAWAR, KHYBER PAKHTUNKHWA

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Annex

To

Section Officer (Estt)
02nd Floor, Abdul Wali Khan Multiplex
Civil Secretariat, Peshawar

Subject: REPLY REGARDING DISCIPLINARY AGAINST DR. AIMAN WAZIR, WOMEN MEDICAL OFFICER (BPS-17) RHSC-A, BANNU

Reference: No. SOE(PWD) 1-189/2018/PF/265-68 Dated: 19th January, 2024

In continuation to my earlier statement, It is humbly stated that I earnestly wish to continue my job as Women Medical Officer in PWD. I am currently in the 5th year of my FCPS training (ending in August, 2024). This training shall enhance my professional capabilities as a Doctor and in a broader picture, I as a specialist doctor would play a much more vital role for the betterment of public as a part of PWD.

Furthermore, it is also pertinent to mention that FCPS-II training is also considered as Postgraduate Medical Education which provides the doctors of mandatory leave for FCPS-II training "THE KHYBER PAKHTUNKHWA (APPOINTMENT, DEPUTATION, POSTING AND TRANSFER OF TEACHERS, LECTURERS, INSTRUCTORS AND DOCTORS) REGULATORY ACT, 2011." Section 7 sub clause (2) along with it also under Civil Servants Act, 1973. (Attached).

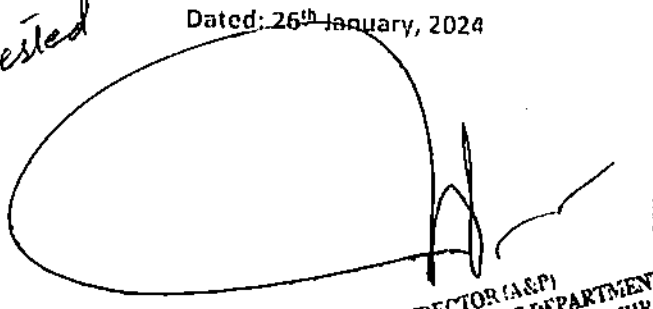
Moreover, I am not provided the copy of Inquiry Officers finding neither I accept the decision of removal from service. The whole proceedings lacked fair play and justice. I being a woman was even denied my due right of maternity leave by the Population Department which is the fundamental right.

Finally, there is also precedents of granting EOL to doctors posted in PWD. I therefore request the reversal of removal from service and to resume my job in PWD department after the completion of my FCPS-II training.


Thank you

Dated: 26th January, 2024

Attested



DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA


Yours sincerely,
Dr. Aiman Wazir

THROUGHPUTS



**GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT**
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar
Email Address: population.establishment@gmail.com
Phone No: 091-9223623

No. SOE (PWD) 1-189/2018/PF/
Dated Peshawar the 27th February, 2024

To
Dr. Aiman Wazir, Women Medical Officer (BS-17),
Population Welfare Department,
House No.84, Street-10 Sector-I, Phase-II,
Hayatabad Peshawar,

DN 12.02
DN 28.02.24

Subject: - **DISCIPLINARY ACTION AGAINST DR. AIMAN WAZIR, WOMEN
MEDICAL OFFICER (BPS-17) RHSC-A, BANNU.**

I am directed to forward herewith a copy of letter No. PS/CLO/2024/2024 dated 27-02-2024 on the subject noted above and to state that the competent authority i.e Chief Secretary, Khyber Pakhtunkhwa has granted you an opportunity of personal hearing and nominated Chief Legislation Officer, Law, Parliamentary Affairs and Human Rights Department.

02. You are therefore, directed to attend the office of the Chief Legislation Officer, Law, Parliamentary Affairs and Human Rights Department on 29-02-2024 at 11:00 AM.

SECTION OFFICER (ESTT)

(Encls: As above):

ENDST: OF EVEN NO. & DATE:

Copy alongwith a copy of enclosure is forwarded to the:-

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar with the request to depute a well conversant officer not below the rank of BS-18 to attend the personal hearing on due date, time and venue alongwith complete record.
2. PS to Secretary Law, Parliamentary Affairs and Human Rights Departments w/r to letter No. referred above.
3. PA to Additional Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.

SECTION OFFICER (ESTT)

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Attested



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**GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT**
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar
Email Address: population.establishment@gmail.com
Phone No: 091-9223623

NOTIFICATION

Dated Peshawar the 03rd April, 2024

No. SOE (PWD) 1-189/2018/PF WHEREAS, Dr. Aiman Wazir (BS-17), Women Medical Officer, RHSC-A DPW-Office, Bannu Population Welfare Department was proceeded against under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Statement of allegations;

AND WHEREAS, Ms. Misbah Riaz (PMS BS-18) Deputy Secretary, Public Health Engineering Department was nominated an inquiry officer to conduct formal inquiry into the charges leveled against the said officer in accordance with rules;

AND WHEREAS, Ms. Aieda Qureshi (PMS BS-18) District Monitoring Officer, Abbottabad was nominated an inquiry officer to conduct De-Novo Inquiry into the charges leveled against the said officer in accordance with rules;

AND WHEREAS, the Inquiry Officers, after having examined the charges, evidence on record and explanation of the accused officer, submitted its reports;

NOW, THEREFORE, the Competent Authority (i.e Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, findings of Inquiry officers, the reply of the accused officer to the show cause and hearing her through hearing officer on 29-02-2024 & 07-03-2024 and exercising his powers under Rule-4(1)(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose major penalty of "Removal from Service" upon Dr. Aiman Wazir (BS-17), Women Medical Officer, RHSC-A DPW-Office, Bannu Population Welfare Department with immediate effect.

-sd-

**SECRETARY
POPULATION WELFARE DEPARTMENT**

ENDST: OF EVEN NO. & DATE:

Copy is forwarded to the: -

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. District Population Welfare Officer, Bannu.
4. District Comptroller / Account Officer, Bannu.
5. Dr. Aiman Wazir, Women Medical Officer (BS-17), Population Welfare Department, House No.84, Street-10 Sector-I, Phase-II, Hayatabad Peshawar.
6. PS to Secretary, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
7. Master file.

(SHAH BAKHT YOUSAFZAI)
SECTION OFFICER (ESTT)

Attested

DIRECTOR (A&P)
POPULATION WELFARE DEPARTMENT
PESHAWAR KHYBER PAKHTUNKHWA

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**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1379/2024.

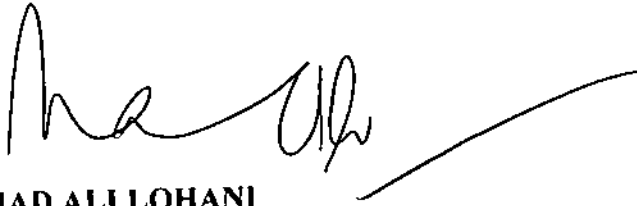
Dr. Aiman Wazir (Appellant)

VS

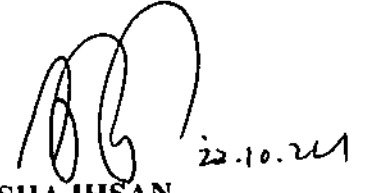
Government of Khyber Pakhtunkhwa through Chief Secretary and Others
.....(Respondents)

AUTHORITY LETTER

Mr. Ahmad Yar Khan Assistant Director (Litigation), Directorate General Population Welfare Khyber Pakhtunkhwa is hereby authorized / nominated on behalf of respondents to submit comment/reply in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.



IMAD ALI LOHANI
Secretary
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2



AYESHA IHSAN
Director General
Population Welfare Khyber Pakhtunkhwa
Respondent No. 3
Director General
Population Welfare Deptt:
Govt. of Khyber Pakhtunkhwa
Peshawar.

22.10.2024

To

Govt. of NWFP
Services and General Admn.
Deptt; (Regulation Wing)

No. SOR-I (S&GAD)4-2/82,
Dated: 15.01.1980.

1. All Administrative Secretaries to Government of NWFP.
2. Secretary to Governor, NWFP.
3. Secretary to Chief Minister, NWFP.
4. All Divisional Commissioners in NWFP.
5. All Heads of attached Departments in NWFP.
6. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
7. All Deputy Commissioners/Political Agents in NWFP.
8. The Registrar, Peshawar High Court, Peshawar.
9. All District and Session Judges in NWFP.
10. The Registrar, NWFP Services Tribunal, Peshawar.
11. The Secretary, NWFP Public Service Commission.
12. The Director, Anti-Corruption Establishment, Peshawar.
13. The Secretary, Board of Revenue, NWFP.

SUBJECT: - SIGNING OF PARA-WISE COMMENTS ETC. IN SERVICE APPEALS FILED IN THE NWFP SERVICES TRIBUNAL BY CIVIL SERVANTS.

Sir,

I am directed to refer to the subject noted above and to say that pursuant to Rule-12(2) of NWFP Services Tribunal Rules, 1974, the competent authority has been pleased to authorize the Administrative Secretaries concerned or a subordinate officer to be nominated by the Administrative Secretary to sign para-wise comments etc. on behalf of the Chief Minister, NWFP and Chief Secretary, NWFP, as the case may be in cases of service appeals filed by the Civil Servants before the NWFP Services Tribunal.

Yours Obedient Servant,

SECTION OFFICER (REGULATION-I)
S&GAD.

Endst: Even No. and date.

- A copy is forwarded for information to the:-
1. All Adml. Secretaries/Dy. Secretaries in S&GAD.
 2. All Section Officers/Estab. Officers in S&GAD.
 3. P.S. to Chief Secretary, NWFP
 4. P.S. to Secretary S&GAD.
 5. Librarian, S&GAD.

SECTION OFFICER (REGULATION-I)