FORM OF ORDER SHEET

Court of	
Anneal No	2165/2024

	. Court		
Appeal No. 2165/2024			
S.No.	Date of order proceedings	Order or other proceedings with signature of judge	
1.	2	3	
1-	28/10/2024	The appeal of Mr. Shahzeb resubmitted today by Malik Shahbaz Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 01.11.2024 Parcha Peshi given to counsel for the appellant.	y
		By order of the Chairman	
		RECESTRAR	
,			

Respected Madam,

It is submitted that the present appeal was returned to counsel for the appellant for removing the deficiencies. Today i.e. 18.10.2024 the learned counsel re-filed the appeal without removing the objection no. 1 to 5.

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

Amerille A

Hon'ble Member-J

Objectors Sustained, return to amone appellent with director to remone Described with in seven days ne objectors with in seven days and re submit it with sure seven days seven days seven days posting. 18/x/24.

No.928/9mst./2024/16PST

Dated 18-10-2024

Note: Re-Submited apper removal of objections.

1) Address corrected.

2) Respondent No.1 impliedly/vestally Malik Shallbar Khan decline The DA of appellant-(2016 Picco) Advocate High Count.

3) DA is place on file/abready available.

22-10-2014

4) pages are lasible.

5) Meessary party added.



The appeal of Mr. Shahzeb received today i.e on 11.10.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Address of appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.

Copy impugned salary stoppage order is not attached with the appeal be placed on it.

Copy of departmental appeal to higher authority is not attached

with the appeal.

Annexures-B&C of the appeal are illegible.

Discussary party be made in the heading of appeal.

6-In the memo of appeal the word petitioner is used but there is no provision in Service Tribunal Act/rules for using the word of petitioner in the appeal.

No. <u>899</u> /Inst./2024/KPST, Dt. <u>11/10</u> /2024.

ABDIKIONAL REGIS RAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Malik Shahbaz Khan Adv. High Court at Mardan

Note: Re-Submitted after removal of
Objections, kindly place
before The Tribinal please. If

Malile Shakbas Khau

Advocate He

11-10-2024

Note: Removal of objection are montioned in detail:

NN Address of appellat is 100% correct according to readily.

There is nontreder passed by the authority functionmunicated to the appellat.

There is nontreder passed by the or page No. 20, alongwith postrecipt.

Departmental appeal is placed on tile on page No. 20, alongwith postrecipt.

Where same pasty is mentioned in plant.

Necessary pasty is mentioned in plant.

Pace before the tribuil please.

Advocate 15/10/posty

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2165 _/2024

Dated: 10-10-2024

Shahzeb	<u>YERSUS</u>	Ар	pellant
District Health Officer	, Mardan	Re	spondent

INDEX

S.No	Description of Documents	Annex	Pages
1.	Service Appeal, Affidavit & Addresses		1-5
2.	Copy of Employment Exchange Certificates and Appointment Order, Medical and Arrival Report	A & B	6-13
3.	Copy of Order dated 27-06-2023	С	14-15
4.	Copy of Applications, Legal Notice	D	16-19
5.	Copy of DA/ Rep: alongwith Post receipt	Е	20-21
6.	WakalatNama	·.·	22

Appellant

Through

Malik Shahbaz Khan Advocate High Court

CHAMBER:

Mir Afzal Plaza, Near MMC Hospital Ring Road, Peshawar. 0301-8181033



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2165 /2024

Shahzeb S/o Aurangzeb
Ward Orderly in BPS-4
RHC, Manga Maydan

...... Appellant

VERSUS

- 1. Director General, Heath, Warsak Road, Peshawar.
- 2. District Health Officer, Mardan, DHQ Hospital, Shamsi Road, Mardan.

..... Respondents

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE ILLEGAL STOPPAGE OF SALARY

Respectfully Sheweth: The appellant is humbly submitted as under:

1. That Appellant being an eligible candidate, appointed as Class-IV on dated 18-02-2022 through Employment Exchange Commission on regular basis and after joining his department, serves his duty with great zeal and zest, but all of the sudden from 01-10-2022 salary of petitioner was stopped despite in attendance on regular basis since appointment till date with a satisfactory service record.

(Copy of Employment Exchange Certificates and Appointment Order, Medical and Arrival Report is attached as Annex-A & B)

- 2. That feeling aggrieved from the unlawful act of respondents, appellant filed online complaint through web before the Provincial Ombudsman KPK, after submitting reply on behalf of respondent, the said complaint was accepted vide order dated 27-06-2023 with direction to release salary of appellant forthwith. (Copy of order is attached as Annex-C)
- 3. That the despite the strict directions, petitioner approached the respondents one after another and time and again requested orally as well as through written applications cum Legal Notice to release his salary and obey the order of Provincial Ombudsman KPK but in vain.

(Copy of Applications, Legal Notice is attached as Annex-D)

4. That feeling aggrieved from the unlawful act of respondents appellant filed departmental Appeal / Representation to respondent but they failed to even respondent hence the instant appeal on following grounds:

(Copy of DA/ Rep: along with Post receipt is attached as Annex-E)

Grounds:

- A. That the stoppage of salary of a civil servant unilaterally, who is still in attendance on regular basis, can in no case be condoned. Reliance placed from Hadith of Holy Prophet (P.B.U.H.) that the wages of a worker be paid before his sweat dries up. Stoppage of salary is in clear violation of the fundamental rules and against the fundamental rights guaranteed under the Constitution of Pakistan, including the right to livelihood of women, child and family. Supreme Court of Pakistan time and again held that any adverse action against a civil servant, such as stoppage of salary, must be preceded by a lawful procedure and the affected party must be given an opportunity of hearing in line with the principles of natural justice.
- B. That Appellant salary has been stopped unlawfully and without any prior notice or without following the prescribed procedures, ensuring a lawful inquiry or hearing, causing significant financial hardship and mental agony. In case of Mst. Shumaila Latif Vs Government of KPK reported as 2017 PLC (CS) Note 14 Peshawar, Honorable Court ruled that withholding the salary of a government employee without providing a valid reason and without issuing a proper notice is contrary to the principles of justice. As long as a person after appointment is working in department his salary cannot be stopped.
- C. That the stoppage of the salary took effect from October 2022 without any formal order or justification being communicated to the Appellant. In case reported as 2000 PLC (CS) 784, Honorable Court held that if the employee is made to work without payment of salary it would be against the injunction of islam which envisages payment of wages before sweat of toil is dried up. This act would also violate the principle of policy contained in Chapter 2, Part-II and Article 3 of the Constitution of Pakistan 1973.
- D. That despite repeated requests made to the concerned authorities, the Appellant has not received any response or explanation regarding the stoppage of salary. In case of reported as 2006 PLC (CS) 402 Service Tribunal Sindh, court ruled that salary is a vested right of a civil servant, and its stoppage without any valid reason or lawful authority is a violation of

the employee's fundamental rights. The court emphasized the importance of a transparent and lawful process before taking any adverse action against a civil servant.

E. That thestoppage of the Appellant salary constitutes a violation of his fundamental rights to a fair livelihood as guaranteed by the Constitution. In case reported as 2005 PLC (CS) Service Tribunal Sindh, Court held that salary is a part of a civil servant's terms of employment, and its arbitrary stoppage amounts to a violation of the right to livelihood.

Prayer:

Dated: 10-10-2024

In light of the above facts and grounds, the Appellant humbly prays that this Honorable Tribunal may graciously be pleased to:

- 1. Direct the Respondents to immediately release the stopped salary of the Appellant from October 2022 up-till present, along with arrears and benefits.
- 2. Declare the stoppage of salary as illegal, unconstitutional, and contrary to the service rules and fundamental rights guaranteed under the Constitution of Pakistan 1973.
- 3. Direct the Respondents to refrain from taking any further adverse action against the Appellant without due process and compliance with the law.

4. Grant any other relief deemed fit by this Honorable Tribunal in the interest of justice and equity.

Appellant

Through

Malik Shahbaz Khan

Advocate High Court

Certificate: It is certified that no such like appeal on the instant subject Appeal has earlier been filed in the Tribunal by appellant.

Appellant

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No	/2024	
Shahzeb		Appellant
	<u>VERSUS</u>	
District Health Offic	er, Mardan	Respondent

ADDRESSES OF PARTIES

APPELLANT

Shahzeb S/o Aurangzeb R/o Mohallah Yaqoob Khan, Kaskorona, District Mardan.

RESPONDENT

District Health Officer, Mardan, DHQ Hospital, Shamsi Road, Mardan.

Counsel

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service A	Appeal No/2024
	ahzeb S/o Aurangzeb R/o Mohallah Yaqoob Khan, Kaskorona, Distric ardan.
·	Appellant <u>VERSUS</u>
Dis	strict Health Officer, Mardan, DHQ Hospital, Shamsi Road, Mardan

AFFIDAVIT

I, hereby solemnly affirm and declare on oath that the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

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DEPONENT

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جن امیدواروں کے پاس تعارفی کارڈ (X-3) موجود شہو۔ ان کودفتر روز گارکا تامز دکردہ تصور شکیا جائے۔

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05/3/2022

ضروری اطلاع برائے امیدوار جب آپ کوطا دست ل جائے توفر اسلکہ جوانی کار در پروفر روزگار کواطلاع کریں۔اس کار در برداک کا تکٹ دگانے کی ضرورے جیں۔ O.P.S.S.

SERVICE UNPAID

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يخدمت جناب فمجرصاحب

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APPOINTMENT ORDER

Mr. Shah Zeb S/O Mr. Aurang Zeb is hereby appointed as Ward Orderly in BPS-4 (9900-440-23100) per Month plus usual allowances as admissible under the rules and posted at in the head of account MR 6465 (CD) and directed to work at RHC-Mangha on the following terms and conditions:-

Terms & Conditions:-

- He is domicfied in District Mardan.
- 2. His appointment is purely on temporary basis for a probation period of initially one-year and is liable to terminate at any time without assigning any notice or reason.
- He will not be entitled to any TA/DA for Medical examination and joining the first appointment.
- His appointment will be subject to medical fitness for Govt: Service.
- 5. THE Is liable to serve anywhere in District as well as in Khyber Pakhtunkhwa.
- He will be governed by such service rules and order as framed by the Government from time to time for the category of government servants tojwhich he belongs.
- His services can be dispensed with during the probation period. If his work and conduct found unsatisfactory.
- 8. If he wishes to resign his service, he will submit his resignation two months notice in advance in writing or deposit one month salary in lieu thereof to Govt: Treasury, however he will continue to serve the Govt: till her resignation is accepted by the competent authority.

If the accepts the above-mentioned terms and conditions, he should report to the Incharge RHC Mangha for duty on his own expenses within seven days after the receipt of this letter, otherwise his appointment order will be considered as concelled.

> District Health Officer Mardan

= 112-3-7-9_{рно} Copy forwarded to the:-

District Comparables of Accounts, Mardan.

Deputy DHO Mardan.

Incharge RHC Mangha

Accountant DHO Office Mardan.

DHIS Call, DHO Office Mardan.

Mr. Shah Zeb S/O Mr. Aurang Zeb P.O. Kas Kodoha Disti Mardan

tor information and nocessary action.

District Health Officer

Mardan 4

12) Mar/1/21

n.

The District Health Officer, Mardan.

Subject

ARRIVAL REPORT.

R/Sir.

In pursuance of DHO, Mardan Office order No.3423-28/DHO dated 18.02.2022. J Mr. Shah Zeh S/O Aurang Zeb is hereby submit my arrival report today on 19.02.2022 (Fore Noon)(Copy of order attached.

It is therefore requested to kindly submit my-arrival report today on 19.02.2022 (Fore Noon) as Ward orderly RHC Manga Mardan and oblige.

Regards.

Dated 19,02,2022.

Yours Obediently.

(Shah Zeb S/O Aurang Zeb) Ward Orderly RHC, Manga

Jan Laced from 1840 pm. 100

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OMBUDSMAN (----) SECRETARIAT, GOVERNMENT OF KHYBER PAKHTUNKHWA

	CLOSURE FINDINGS			
i	COMPLAINT NO.	PO/Complaint No. 127/01/2023.		
2	NAME & ADDRESS OF THE	Mr.Shahzeb ro Kaskorono Mohalla Yaqoob		
	COMPLAINANT	Khan District Mardan (Contact # 0314-4444318).		
3	NAME OF THE AGENCY	1. Secretary to Govt: of Khyber Pakhtunkhwa.		
:	COMPLAINED AGAINST	Health Department Peshawar.		
		2. Director General.		
•		Health Services, Peshawar,		
•		3. District Health Officer, Mardan		
1	I NAME OF THE	Wagar Maroof (Consultant-II)		
	INVESTIGATION OFFICER			
, 5	SUBJECT OF COMPLAINT	REQUEST FOR RELEASE OF SALARY.		
6	DATE OF REGISTRATION	18/01/2023.		
7	DATE OF FINDINGS	23/6/2023		

THE COMPLAINT

Mr. Shahzeb r/o District Mardan lodged the instant complaint stating that he has applied for the post of Class-IV in Health Department Government of Khyber Pakhtunkhwa. Later on he was appointed against the post of Lady Health Worker and currently working at RHC Manga District Mardan since February 2022. The complainant further added that he is a regular employee of Health Department but his salary has been stopped by the department for last four months while he is regularly performing his duty and also marking attendance on daily basis. He has requested the department for release of salary but to no avail. He approached this Forum for redressal of his grievance.

REPLY OF THE AGENCY

Notices in terms of section 10 (4) of the Khyber Pakhtunkhwa Provincial Ombudsman Act. 2010 were issued to the Secretary to Govt: of Khyber Pakhtunkhwa. Health Department. Director General. Health Services, Peshawar and District Health Officer, Mardan to meet the aflegations contained in the complaint and to submit reply including rebuttal, if any. In response, District Health Officer Mardan submitted written reply intimating that case of the complainant 31 (Thirty One) others Class-IV employees cases are under inquiry as they are drawing salaries against Lady Health Worker posts. Action will be taken as soon as inquiry in the case is finalized.

REJOINDER

Report of the Agency was shared with the complainant for his feedback/rejoinder. In response he denied the stance of the Agency and reaerated his earlier version.

HEARING

To ascertain the factual position, ease was fixed for hearing on 13/06/2023,Dr. Absan



OMBUDSMAN (____) SECRETARIAT, GOVERNMENT OF KHYBER PAKHTUNKHWA



FINDINGS

has been observed that the representative of the Agency failed to defend his stance. He has admitted that complainant was selected on the post of LHW and was getting salary but suddenly his salary was stopped. Although complainant is still attending his department but without salary. Therefore, viewpoint of the department is not convincing and cannot be accepted. Hence stoppage of salary is against the rules. It is recommended that the department shall-release salary of the complainant forthwith

1/3. These recommendations should be implemented within 45 days of the receipt of these findings under intimation to this Secretariat within the said period.

NOTE: Defiance / Non-compliance shall warrant disciplinary proceeding in terms of Section 14 sub-Section 6 & 7 of the Khyber Pakhtunkhwa Provincial Ombudsman Act 2010 whereby, the government will take necessary action for ensuring good governance.

Syed Jamalud din Shah Provincial Ombudsman

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Races Muhammad

Advocate High Court

Office: FF- 305, 307

Deans Trade Centre, Peshawar.

Contact: 0301-8181033

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Ref. No.

To.

The Esteemed District Health Officer, Mardan

LEGAL NOTICE

Respected Sir, Assalam Alikom

Under the instruction of my client namely Mr. Shahzeb. I served on your good self this Legal Notice informing your good self as follows:

- 1. That my client being an eligible candidate, was appointed as Class-IV in February 2022 on regular basis under your umbrella and after joining, serves his duty with great zeal and zest till yet.
- 2. That all of the sudden, his salary was stopped despite marking attendance on regular basis where against, my client filed complaint before the Chairman, Provincial Ombudsman KPK, after submitting reply on your behalf and after hearing the arguments, complaint of client was accepted on dated 27-06-2023 with direction to release salary of my client forthwith.

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- 3. That soon after order and crystal elementaries directions, my blient approached to you and time and again requested orally as well as through a written application to consider him and obey the order of this Honorable Chairman, Provincial Ombudsman KPK but in vain.
- 4. That on such act you intentionally committed a breach by disobeying the order of Honorable Chairman, Provincial Ombudsman KPK which come within the domain of Contempt of Court.
- 5. That every government functionary is under legal obligation to honour the order of competent jurisdiction and you by not complying and obeying with the order, have not performed their duty in accordance with law.
- 6. That non-compliance of the order, speaks malafide on the part of you to lower the position of the competent authority in the eye of public at large thus, from the facts and grounds taken, it has become crystal clear that you have committed contempt of court.

Under the aforesaid facts and circumstances, through this Legal Notice on behalf of my client, do hereby call upon your good self, to implement order dated 27-06-2023 of Honorable Chairman, Provincial Ombudsman KPK in true letter and spirit without wasting the precious time of my client with further requesting to handover the progress report of w.c.f from 27-06-2023 till date to my client within 10 days otherwise my client secure the right to avail civil as well criminal remedies against

your good self in your personal enpacity before the competent court of law at your risk and cost.

NOTE:

A copy of this legal notice has been retained in my office for further necessary action, if required.

Advocate

Kr02-90-11 Ber 1/1/ BACOS 13/19 2018 M/2/2 3 (- 9000 - 1/2) 4 4 M B-40 (1500) E 20 Mg 8200 0 / 20 2 2 / 10 1 2 10 10 8 8 100 21- 248 em 2 4/5 2 (en may de) 4 Jan 10 2 2 29 20 6 Jun 2 2 30 ft = ing why & & soul 11 fout 3/20 (And a) (12 m) mele (1500002P M 40 -18-16/19) reflectes 19 Peloristor (36) Les ou 2013 a grow pM 31/11

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VAKALATNAMA

BEFORE THE KP	<u> SERVICE TR</u>	IBUNAL, PESHAWAR
Service Appeal No	/2024	
	•	
Shahzeb		Appellant
	<u>VERSUS</u>	
District Health Officer, Mardan		Respondent

By this Power of Attorney I the said Appellant in the above titled case do hereby appoint and constitute Malik Shahbaz Khan Advocate High Court as my attorney for me/us in my/our name and on my/our behalf to appear, plead, give statement, verify, to file suit, written statement, application ,objection, execution, civil or criminal application/petition and contest Suit, Case, Appeal, Revision, Review before the original, appellate, revisional Court, Tribunal, Arbitrator (s) Forum, to administer oath, examine/cross examine witness (es) and to do all lawful acts and things in connection with the said case on my/our behalf or with the execution of any decree or order passed in the case in my/our favour/against which I/We shall be entitled or permitted to do myself/ourselves, and, in particular, shall be entitle to withdraw or compromise or refer it to arbitration or to agree to abide by the special oath of any person and to withdraw and receive documents and money, fine, cost, cheque (s) from the Court or the opposite party and to sign proper receipt and discharge for the same and to engage and appoint any other pleader irrespective of my/our success or failure in case provided that if the case is heard at any place other then the usual place of sitting of the court the pleader shall not be bound to attend except the mutual agreement between us.

Attested and accepted:

Malik Shahbaz Khan

Advocate High Court

Shahzeb

CHAMBER:

Mir Afzal Plaza, Near MMC Hospital Ring Road, Peshawar. 0301-8181033