

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 3870/2021

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)  
MRS. RASHIDA BANO ... MEMBER (J)

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Pir Khushtab Ahmad Shah S/O Nazir Ahmad Shah R/O Grid Road,  
D.I.Khan.....Appellant

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
  2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
  3. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
  4. Director Health Services FATA, FATA Secretariat Peshawar.
  5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
  6. The District Health Officer, Wana SWTD.
  7. The District Accounts Officer Wana SWTD at Tank.
- .... (Respondents)

Mr. Gul Tiaz Khan Marwat  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institutions.....16.03.2021  
Date of Hearing.....09.10.2024  
Date of Decision.....09.10.2024

JUDGMENT

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, this Hon’ble Tribunal may very graciously be pleased to issue**



**order/directions declaring the impugned actions/inactions of respondent No.6 and rest of the respondents collectively and individually of stoppage of salary of appellant to be void ab-initio, malafide, arbitrary, without jurisdiction and without lawful authority and of no legal effect qua the rights of appellant and as a consequence of thereof to issue direction to respondents to release the salary/pay of appellant for the month of April 2020 as well as amount deducted from the monthly pay of August and September 2021 forthwith. Any others remedy which this august Tribunal deems appropriate may also be awarded in favour of the appellant.”**

2. Brief facts of the case, as given in the memorandum of appeal are that the appellant was appointed as a Dispenser by the Divisional Director Health Services, D.I. Khan Division vide order dated 29.06.1995. After taking charge of the post, the appellant's service record was duly maintained, and his service was verified periodically by the competent authority. The appellant was issued personal code No. 50161161 and he received his monthly salary without any issue or complaints about his performance, upto March 2020. However, starting from April 2020, the appellant's salary was suddenly stopped by Respondent No. 6. Against which he filed representation on 02.05.2020 to Respondent No. 4, seeking release of his pay which was un-responded. He then filed Writ Petition No. 419-D/2020 before the Peshawar High Court, D.I. Khan Bench, challenging the withholding of his salary. On 24.02.2021, the petition was dismissed due to lack of jurisdiction, with the observation that the appellant could approach the



appropriate forum for redressal. In response, the appellant filed Appeal No. 3870/2021 before this Tribunal, which was admitted for full hearing on 28.07.2021. During pendency of appeal respondent No. 6 further deducted Rs. 53,175/- from the appellant's salary for the month of August 2021 without any reason. In response, the appellant served a legal notice on 08.09.2021 to Respondent No. 6, warning against further deductions from his salary. The appellant also filed a departmental appeal with Respondent No. 4. However, despite these steps, Respondent No. 6 deducted Rs. 53,175/- from the appellant's salary in August 2021 and Rs. 55,175/- in September 2021, without any reason. The appellant then sought to amend his appeal to include these salary deductions for August and September 2021. The tribunal accepted the amendment on 28.10.2021, and the appellant now challenges the withholding and deduction of his salary as being in complete disregard for the law and the authority of the court.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned orders.



6. Through instant appeal, the appellant challenged his stoppage of salary for the month of April 2020 vide order dated 30.04.2020 initially against, which appellant filed departmental appeal on 02.05.2020 while he had filed instant service appeal on 16.03.2021 which he was required to file within next 30 days after waiting for completion of 90 days statutory period as provided in Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Therefore, appeal to this extent is barred by six months and fifteen days. Relevant para is reproduce as under:

*Section 4, "Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter."*

7. So far as subsequent deduction and amendment in appeal is concerned, prayer to that extent is premature because deduction was made from the salary of appellant for the month of September/October 2021 against which he filed departmental appeal on 05.10.2021. For its decision of which he was required to wait or if no response was given by the authority, then after lapse of 90 days statutory period, his appeal before this Tribunal would be competent, while he filed application on 08.10.2021 and filed amended appeal on 04.11.2020 which is much before the lapse of statutory period of 90 days. Besides, appellant alongwith 65 other staff members of DHQ Office South Waziristan Wana remained absent from duty for the entire



month of March 2020. Therefore, authority instead of proceeding them departmentally under (Efficiency & Discipline) Rules, 2011 only deducted pay of the appellant alongwith others of the absence period. Appellant took the plea that during March 2020, government gives exemption from duty to those civil servants whose age are above 55 years. This plea is of no help to the appellant, as the exemption was granted to civil servants of other departments and not to those in the Health Sector, specifically doctors, dispensers, and technicians, whose duties were required to address the Covid-19 emergency. At that time, the government even hired paramedics and doctors on a contractual basis to cope with the emergency.


8. For what has been discussed above, we are unison to dismiss the appeal being devoid of merits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 9<sup>th</sup> day of October, 2024.*

  
(AURANGZEB KHATTAK)  
Member (Judicial)

Kaleemullah

09.10  
2024.

  
(RASHIDA BANO)  
Member (Judicial)


ORDER

09.10.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 9<sup>th</sup> day of October, 2024.*


  
(AURANGZEB KHATTAK) 2024.  
Member (J)

  
(RASHIDA BANO)  
Member (J)

Note

4<sup>th</sup> October, 2024 The case could not be fixed before DB at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 09/10/2024 before D.B at the Principal Seat Peshawar. Counsel has been informed telephonically.

*Counsel Infrom I. Phonically  
call  
9*

  
(Habib Ur Rehman Orakzai)  
Registrar

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.3870/2021**

Date of presentation of Appeal 09.10.2021  
Date of hearing 08.10.2024  
Date of Decision 08.10.2024

Pir Khushtab Ahmad Shah S/O Nazir Ahmad Sha R/O Grid Road D.I.Khan. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar, Peshawar.
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

...  
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF WITHHOLDING OF MONTHLY OF APPELLANT BY RESPONDENT NO. 6 FOR THE MONTH OF APRIL 2020 AND RECOVERY /DEDUCTION OF AMOUNT OF RS. 53175/- AND AMOUNT OF RS. 55175/- FROM MONTHLY PAY OF AUGUST AND SEPTEMBER 2021 RESPECTFULLY.


**PRESENT**

1. Mr. Gul Tiaz Khan Marwat, Advocate for the appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 9<sup>th</sup> day of October 2024.

  
(AURANGZEB KHATTAK)  
Member (J)  
09/10/2024

  
(RASHIDA BANO)  
Member (J)