

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No \_\_\_\_\_ /20~~18~~<sup>20</sup>  
in  
Service Appeal No 528 /2018

Dr Rizwanullah Khan .....Appellant

Versus

Government of KPK through Chief Secretary & others .....Respondents

INDEX

S. No	Description of Document	Dated	Annex	Pg No
1.	Copy of application and affidavit			1-2
2.	Copy of Notification	01-11-17	A	3
3.	Copy of Notification	21-11-17	B	4
4.	Copy of Departmental Appeal under RTI Act		C	5

Appellant,  
*Rizwanullah Khan*  
17/11/20

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No \_\_\_\_\_/2020

in

Service Appeal No 528 /2018

Dr Rizwanullah Khan versus Govt of KPK through Chief Secty and others

Application for directing the respondents to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017

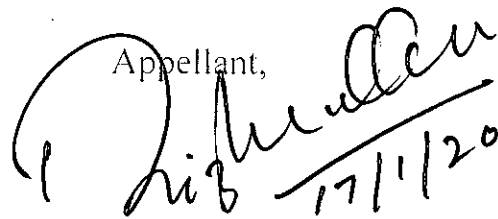
Respectfully Sheweth,

The appellants submit as follows:

1. That the title Service Appeal is pending adjudication before this Honorable Tribunal and is fixed for hearing today.
2. That in order to arrive at a just and fair conclusion of the title Service Appeal, it is necessary to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017, hence this application for issuing appropriate directions to the respondents. (Copies of Notifications are **Annex-A & B** respectively)

It is, therefore, prayed that on acceptance of this application the respondents may kindly be directed to place on file the approval note of worthy Chief Secretary Khyber Pakhtunkhwa and official correspondence before the issuance of Notification No SOH(E-II)/1-5/2017 dated 01-11-2017 and Notification No SOH(E-II)/1-5/2017 dated 21-11-2017.

Appellant,

  
17/11/20

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

2

C.M No \_\_\_\_\_ /20~~20~~  
in  
Service Appeal No 528 /2018

Dr Rizwanullah Khan

.....Appellant

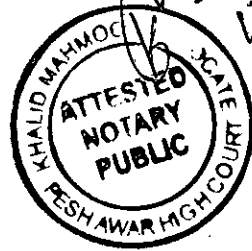
Versus

Government of KPK through Chief Secretary & others

.....Respondents

**Affidavit**

I, Dr Rizwanullah Khan, Director at Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



Deponent  
*Rizwanullah Khan*  
*17/1/20*  
Dr Rizwanullah Khan



12/4/17  
01/11/17

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Amer A

Dated Peshawar the 01<sup>st</sup> November 2017

3

**NOTIFICATION**

**NO.SOH(E-II)/1-5/2017** In pursuance of Khyber Pakhtunkhwa Service Tribunal Appeal No.983/2014 dated 21.04.2017, Khyber Pakhtunkhwa Civil Servant Act 1973 amendment Acts-IX of 2005, III of 2013, read with Govt. of Khyber Pakhtunkhwa Finance Department letter dated 27.02.2013, S&GAD letter dated 15.08.2005, Establishment & Administration Department letter dated 22.07.2014 and further read with Supreme Court of Pakistan Judgment of CA 504 of 2008 dated 18.01.2012, 2014 SCMR 1289, 2016 PLD (SC) 534, 2009 SCMR 1, Peshawar High Court Judgments dated 09.09.2014 in WP No.1188 of 2012 and dated 22.06.2017 in WP No.3394, the service of Dr. Rizwanullah Khan, SMO, BS-18 presently working as Deputy Director (HRM), Directorate General Health Services Khyber Pakhtunkhwa is regularized w.e.f. 01.07.2001 with all back benefits including Pension and seniority w.e.f his initial date of contractual appointment dated 25.11.1995 due to continuous officiating service followed by regularization.

**SECRETARY HEALTH  
KHYBER PAKHTUNKHWA**

**Endst. No. & Date even.**

Copy to:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Section Officer (Lit-II), Health Department.
5. PS to Secretary Health Department.
6. Doctor concerned.

(Jibree Raza)  
SECTION OFFICER (E-II)

**OFFICE OF THE DIRECTOR GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR.**

No. 2724-31 E-I

Dated Peshawar the 01.11.2017

Copy forwarded to for information & necessary action.

1. Accountant General Khyber Pakhtunkhwa.
2. Additional Director General (HRM) DGHS Office Peshawar.
3. Additional Director General (Admn:) DGHS Office Peshawar.
4. Director (Admn: /HRM) DGHS Office Peshawar.
5. Deputy Director (Accounts) DGHS Office Peshawar..
6. PA to Director General Health Services Khyber Pakhtunkhwa.
7. Doctor Concerned.
8. AE-IV DGHS Office Peshawar

Additional Director General (HRM)  
DIRECTORATE GENERAL HEALTH  
SERVICES KHYBER PAKHTUNKHWA PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

Dated Peshawar, the 21<sup>st</sup> November, 2017

Amir B

Amir D.H

4

**NOTIFICATION**

**NO. SOH(E-II)/1-5/2017** WHEREAS, the contractual services of Dr. Rizwanullah s/o Amanullah Khan, Medical Officer, BS-17 was regularized w.e.f. 01.07.2001 with all back benefits including Pension and seniority w.e.f. his initial date of contractual appointment dated 25.11.1995 due to continuous officiating service followed by regularization vide Notification of even No. dated 01.11.2017;

AND WHEREAS, seniority etc are reckoned from the date of appointment on regular basis;

AND WHEREAS, in pursuance of the judgment dated 18.11.2008 of the Honble Peshawar High court Peshawar in Writ Petition No. 510/2007 titled Dr. Rizwanullah s/o Amanullah Khan and others VS Govt. of Khyber Pakhtunkhwa read with sub-section 2 of Section 2 of Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2005 (Khyber Pakhtunkhwa Act IX of 2005) and provision under sub section-4 of section-19 of Civil Servants (Amendment) Act 2013 also taking into consideration, the judgment of Khyber Pakhtunkhwa Service Tribunal dated 21.04.2017 in service appeal No. 983/2014, the services of Dr. Rizwanullah s/o Amanullah Khan, MO, BS-17 have already been regularized w.e.f. 01.07.2001 with seniority benefits etc vide this Department Notification No. SO(E)H-II/3-18/2016 dated 17.10.2017;

NOW THEREFORE, the Notification bearing No. SO(E)H-II/1-5/2017 dated 01.11.2017 issued inadvertently stand withdrawn ab initio.

SECRETARY HEALTH  
KHYBER PAKHTUNKHWA

Ehdst. No. & Date even.

Copy to:

1. Accountant General Khyber Pakhtunkhwa.
2. Director General Health Services, Khyber Pakhtunkhwa.
3. Additional Director General (HRM) DGHS office Peshawar.
4. Section Officer (Lit-I), Health Department.
5. PS to Secretary Health, Khyber Pakhtunkhwa.
6. Doctor concerned.

(Jibree Raza)  
SECTION OFFICER (E-II)

ATTESTED

Annex-C

5

The Secretary Health Government of  
Khyber Pakhtunkhwa Peshawar.

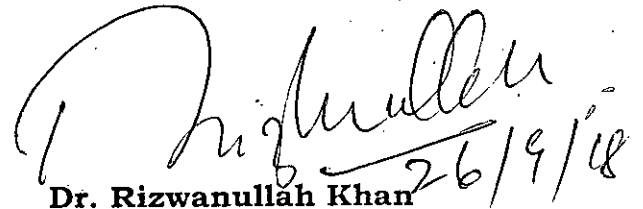
Subject: - **APPLICATION FOR ATTESTED COPIES OF APPROVED NOTES  
OF WORTHY CHIEF SECRETARY KHYBER PAKHTUNKHWA  
UNDER KP RIGHT TO INFORMATION ACT 2013.**

Respected Sir,

With due respect it is requested that the attested copies of the approved notes of Worthy Chief Secretary Govt. of Khyber Pakhtunkhwa regarding the following Notifications may be provided under Khyber Pakhtunkhwa Right to Information Act 2013.

1. Notification No. SO (E) H-II/3-18/2016 dated: 17.10.2017.
2. Notification No. SOH (E-II)/1-5/2017 dated: 01.11.2017.
3. Notification No. SOH (E-II)/1-5/2017 dated: 21.11.2017.
4. Notification No. SOH (E-II)/3-18/2016 dated: 26.06.2018.

Dated: 26.09.2018

  
26/9/18

**Dr. Rizwanullah Khan**

C/O Ayub Khan Shinwari, Advocate  
7-A, Haroon Mantion, Soekarno Chowk  
Peshawar City  
Contact # 0333-2688121  
N.I.C # 17301-8022561-1

1. Chief Secretary Govt. of Khyber Pakhtunkhwa.  
2. Commissioner Right to Information Commission 7<sup>th</sup> Floor Tasneem Plaza Peshawar Cantt.

SH-DY: NO: 881

Dated: 26/09/2017

ATTESTED



**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In re-Service appeal No. 528/2018

Dr. Rizwanullah Khan Versus Govt. of KP through Chief Secty & Others

**INDEX**

<b>S.No</b>	<b>Description of documents</b>	<b>Dated</b>	<b>Annex</b>	<b>Pg No</b>
1.	Rejoinder and Affidavit			1-3
2.	Copy of correspondence approval Note of Notification dated: 01.11.2017		R/1	4-8
3.	Copy of application of the appellatnt to RTI Commission		R/2	9-10
4.	Copy of report submitted by the respondent No. 2 to the RTI Commission vide letter dated: 03.07.2020 of PIO Health Department to RTI Commission		R/3	11-13
5.	Copy of Office Order	08.09.2020	R/4	14
6.	Copy of approval Note of Notification dated: 26.06.2018		R/5	15-21
7.	Copy of Notification	26.06.2018	R/6	22-23
8.	Copy of Office Order / First reminder	06.11.2020	R/7	24
9.	Copy of Office Order / Second reminder	16.12.2020	R/8	25
10.	Copy of Office Order / Third reminder	13.01.2021	R/9	26
11.	Copy of letter to Secretary Estt:	27.04.2021	R/10	27
12.				
13.				
14.				
15.				

Appellant

Through

**M. Ayub Khan Shinwari**  
Advocate Peshawar

In re-Service Appeal No 528/2018

Dr Rizwanullah Khan versus Govt of KP through Chief Secy & others.

**Rejoinder on behalf of the Appellant**

**On Preliminary Objections:**

All the preliminary objections are wrong, incorrect, misleading and misconceived, hence denied.

**On Facts:**

1. Para No "1" of the Service Appeal is admitted to be correct, hence needs no reply.

2. Para No "2" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. The reply given by respondents is totally irrelevant, the respondents have concealed the fact that the controversy which the respondents are raising in the para has been resolved by the Honorable Peshawar High Court in case reported as 2009 PLC (CS) 389.

3. Para No "3" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct.

4. Para No "4" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. In fact, the Notification 01-11-2017 was issued by the competent authority but the same has been withdrawn vide impugned Notification dated 21-11-2017 without fulfilling the codal formalities by an incompetent authority. The appellant has already filed application before the respondents to provide him the copy of approval note of the competent authority for the issuance of the impugned Notification



dated 21-11-2017 but in vain, same application has with same prayer has also been filed in the title Service Appeal before this Honorable Tribunal.

The Notification dated 01-11-2017 was issued after fulfilling all the codal formalities by the competent authority. (Copy of correspondence approval Note of Notification dated 01-11-2017 is attached herewith as Annex-R/1)

Furthermore, on an application of the appellant to the Right to Information, the respondents despite repeated directions by the commission have failed to furnish the requisite documents i.e., approval of the impugned Notification dated 21-11-2017 to the appellant. (Copy of application of the appellant to RTI Commission, report submitted by the respondent No 2 to the RTI Commission vide letter dated 03-07-2020 of PIO Health Deptt to RTI Commission is attached as Annex-R/2 & R/3)

The appellant brought the said fact in the notice of respondent No 1 by filing an appeal. Upon the said appeal of the appellant, the worthy respondent No 1 has directed the respondent No 2 to provide the approval note of the impugned Notification dated 21-11-2017 vide Office Order dated 08-09-2020, but in vain. (Copy of office order dated 08-09-2020 is attached herewith as Annex-R/4)

5. Para No "5" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
6. Para No "6" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
7. Para No "7" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.

#### On Grounds:

- a. Para "a" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
- b. Para "b" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
- c. Para "c" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
- d. Para "d" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.
- e. Para "e" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. The appellant has been treated discriminatory, as one of the colleagues of the appellant namely Dr Shah

Room has been granted the pension benefits by counting his contractual service from initial date of appointment vide Notification dated 26-06-2018. (Copy of approval Note of Notification dated 26-06-2018 and said Notification is filed herewith as **Annex-R/5 & R/6**)

- f. Para "P" of the reply is wrong, incorrect and misleading, hence denied while that of Service Appeal is correct. Details are given in preceding para's.

It is, therefore, prayed that the title Service Appeal may kindly be allowed as prayed for.

*[Handwritten Signature]*  
Appellant,

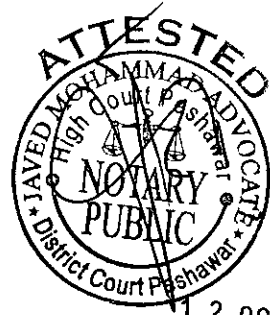
Through

**M Ayub Khan Shinwari**  
Advocate Peshawar

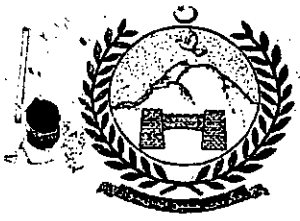
**Affidavit**

I, Dr Rizwanullah Khan, Director (HRM), DGHS, Peshawar do hereby state on oath that the contents of the accompanying rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

*[Handwritten Signature]*  
Deponent



12 OCT 2020

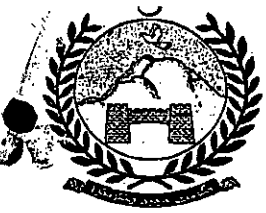
**NOTE FOR CHIEF SECRETARY KHYBER PAKHTUNKHWA.**

**SUBJECT:** REGULARIZATION OF CONTRACT SERVICE UNDER KHYBER PAKHTUNKHWA SERVICE TRIBUNAL JUDGMENT AND ENTILEMENT OF SENIORITY AND PENSION BENEFITS W.E.F INITIAL DATE OF CONTRACTUAL APPOINTMENT DUE TO CONTINOUS OFFICIATING SERVICE FOLLOWED BY REGULARIZATION.

1. The Khyber Pakhtunkhwa Service Tribunal remanded Service Appeal No. 983/2003 on dated 21.04.2017 (**ANNEX-I**) in respect of Dr. Rizwanullah Khan who presently working as Deputy Director (HRM) BPS-18 in DGHS Office Peshawar to issue revise Notification of regularization of his service under Act-III of 2013 (**ANNEX-II**) and relevant letter of Khyber Pakhtunkhwa Finance Department (Regularization Wing) No. SOSR-III/FD/12-I/2005 dated: 27.02.2013 (**ANNEX-III**) under which he is entitle for pension and gratuity w.e.f date of enforcement of Act i.e 31.06.2001.

2. Dr. Rizwanullah Khan was initially appointed as Medical Officer (BPS-17) on contract basis on 25.11.1995 (**ANNEX-IV**) in prescribe manner against regular sanctioned and lien containing post. He continuously performed his service without any break until Government of Khyber Pakhtunkhwa brought Amendment in Section-19 of Khyber Pakhtunkhwa Civil Servant Act 1973 by Act-IX of 2005 (**ANNEX-V**) under which his service were regularized on the direction of Peshawar High Court Peshawar Judgment dated: 18.11.2008 in WP 1510 of 2007 (**ANNEX-VI**) but w.e.f date of enforcement of said Act i.e 23.07.2005 (**ANNEX-VII**) while other Departments regularized their Civil Servants under same Act read with relevant letter of Government of Khyber Pakhtunkhwa Services & General Administration Department letter No. SOR-IV (E&AD) 1-13/2005 dated: 15.08.2005 (**ANNEX-VIII, IX, X, XI,**) w.e.f their initial date of contractual appointment with the approval of your good self. The Health Department also regularizes Dr. Farmanullah w.e.f their initial date of contractual appointment dated: 11.12.2001 (**ANNEX-XII-XIII**)

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

5

in pursuance of Judgment of Supreme Court Pakistan dated: 18.01.2012 in CA No. 504 of 2008 (**ANNEX-XIV**). The Health Department also regularized Dental Surgeons w.e.f their initial date of contractual appointment (**ANNEX-XV**).

3. Government of Khyber Pakhtunkhwa further amended section-19 of Khyber Pakhtunkhwa Civil Servant Act 1973 by Act-III of 2013 under which the Civil Servants are entitled for pension and gratuity who were previously not entitled under Act-IX of 2005. The Khyber Pakhtunkhwa Service Tribunal in remanded Service Appeal No. 983/2014 directed to implement this ACT. While on the other hand Supreme Court of Pakistan in 2016 PLD (SC) 534 (**ANNEX-XVI**) and Peshawar High Court Peshawar Judgments dated: 09.09.2014 in WP No. 1188 of 2012 (**ANNEX-XVII**) and dated: 22.06.2017 in WP No. 3394 of 2016 (**ANNEX-XVIII**) have decided that in such type of cases the Civil Servants are entitle for pension w.e.f their initial date of contractual appointment due to continuous officiating service followed by regularization.

4. Government of Khyber Pakhtunkhwa Establishment and Administration Department vide letter No. SOR-II (E&AD)1-20/2008 (Vol-XII) dated: 22.07.2014 (**ANNEX-XIX, XX**) advised the Health Department that inter-se Seniority between Dr. Rizwanullah Khan who was appointed on 25.11.1995 and Dr. Muhammad Iqbal who was appointed on 08.07.1998 (**ANNEX-XXI**) should be examined strictly under section-8 of Khyber Pakhtunkhwa Civil Servant Act 1973 and Rule-17 of Khyber Pakhtunkhwa Civil Servant (Appointment, Posting; Transfer) Rules 1989 and decide the case accordingly. This Department has decided the inter-se seniority between Dr. Rizwanullah Khan appointed much earlier and senior than Dr. Muhammad Iqbal who was regularized under section 23 of Khyber Pakhtunkhwa Civil Servant Act 1973 (**ANNEX-XXII**). The Supreme Court of Pakistan has also decided in reported case

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

6

2014SCRM1289 (ANNEX-XXIII) that Seniority of Civil Servant shall reckoned from initial date of appointment and not from date of confirmation or regularization.

5. In the light of above mentioned and in pursuance of Khyber Pakhtunkhwa Service Tribunal Appeal No. 983/2014, Khyber Pakhtunkhwa Civil Servant Act 1973 amendment Acts-IX of 2005, III of 2013, read with Government of Khyber Pakhtunkhwa Finance Department letter dated: 27.02.2013, S&GAD letter dated: 15.08.2005, Establishment & Administration Department letter dated: 22.07.2014, and further read with Supreme Court of Pakistan Judgment in CA 504 of 2008 dated: 18.01.2012, 2014 SCMR 1289, 2016 PLD (SC) 534, 2009 SCMR 1 (ANNEX-XXIV), Peshawar High Court Peshawar Judgments dated: 09.09.2014 in WP No. 1188 of 2012 and dated: 22.06.2017 in WP No. 3394, the service of Dr. Rizwanullah Khan Deputy Director (HRM) DGHS may be regularized w.e.f 01.07.2001 with all back benefits including pension, seniority w.e.f his initial date of contractual appointment dated: 25.11.1995 due to continuous officiating service followed by regularization.

6. Submitted for approval para-5 please.

MUHAMMAD AFID MAJEED  
SECRETARY HEALTH  
KHYBER PAKHTUNKHWA

SECRETARY ESTABLISHMENT  
KHYBER PAKHTUNKHWA

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

ATTESTED

F.No. 699  
Date 18/10/17  
Secretary Health

Ps / Secy (E) & AD  
Dist No. 3008  
Dated 19/11/17

07. Note for the Chief Secretary Khyber Pakhtunkhwa regarding regularization of contract service under Khyber Pakhtunkhwa Service Tribunal Judgment and entitlement of seniority and pension benefits w.e.f initial date of contractual appointment due to continuous officiating service followed by regularization has been examined.

08. It is pertinent to mention here that Health Department has recently submitted the case regarding fixation of seniority of the Dental Surgeons (BS-17) which has been approved by the competent authority (Annex-XXV).

09. In light of the judgment of Khyber Pakhtunkhwa Service Tribunal, proposal contained in Para-5 of the Note is submitted for approval of the Chief Secretary Khyber Pakhtunkhwa.

(Arshad Majeed)  
Secretary Establishment  
27 October, 2017

Chief Secretary Khyber Pakhtunkhwa

Ah

Secy Health

20/10  
Chief Secretary  
Govt. Of Khyber Pakhtunkhwa

Amir  
20/10/17

Asst  
E-II

Indig  
30/10

Ps / Secy (E) & AD  
CAIC S Khyber Pakhtunkhwa  
No. 4840  
Date 27/10/17  
Bisy No. 3008  
Dated 27/10/17

ATTESTED



12/4/17  
01/11/17

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT  
Dated Peshawar the 01<sup>st</sup> November 2017

8

Annex E-1

**NOTIFICATION**

**NO.SOH(E-II)/1-5/2017**

In pursuance of Khyber Pakhtunkhwa Service Tribunal Appeal No.983/2014 dated 21.04.2017, Khyber Pakhtunkhwa Civil Servant Act 1973 amendment Acts-IX of 2005, III of 2013, read with Govt. of Khyber Pakhtunkhwa Finance Department letter dated 27.02.2013, S&GAD letter dated 15.08.2005, Establishment & Administration Department letter dated 22.07.2014 and further read with Supreme Court of Pakistan Judgment of CA 504 of 2008 dated 18.01.2012, 2014 SCMR 1289, 2016 PLD (SC) 534, 2009 SCMR 1, Peshawar High Court Judgments dated 09.09.2014 in WP No.1188 of 2012 and dated 22.06.2017 in WP No.3394, the service of Dr. Rizwanullah Khan, SMO, BS-18 presently working as Deputy Director (HRM), Directorate General Health Services Khyber Pakhtunkhwa is regularized w.e.f. 01.07.2001 with all back benefits including Pension and seniority w.e.f his initial date of contractual appointment dated 25.11.1995 due to continuous officiating service followed by regularization.

**SECRETARY HEALTH  
KHYBER PAKHTUNKHWA**

**Endst. No. & Date even.**

Copy to:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Section Officer (Lit-II), Health Department.
5. PS to Secretary Health Department.
6. Doctor concerned.

*(Signature)*  
(Jibreel Raza)  
SECTION OFFICER (E-II)

**OFFICE OF THE DIRECTOR GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR.**

No. 2724-31E-I

Dated Peshawar the 01.11.2017

Copy forwarded to for information & necessary action.

1. Accountant General Khyber Pakhtunkhwa.
2. Additional Director General (HRM) DGHS Office Peshawar.
3. Additional Director General (Admn:) DGHS Office Peshawar.
4. Director (Admn: /HRM) DGHS Office Peshawar.
5. Deputy Director (Accounts) DGHS Office Peshawar..
6. PA to Director General Health Services Khyber Pakhtunkhwa.
7. Doctor Concerned.
8. AE-IV DGHS Office Peshawar

**ATTESTED**

*(Signature)*  
Additional Director General (HRM)  
DIRECTORATE GENERAL HEALTH  
SERVICES KHYBER PAKHTUNKHWA PESHAWAR

The Secretary Health Government of  
Khyber Pakhtunkhwa Peshawar.

**Subject - APPLICATION FOR ATTESTED COPIES OF APPROVED NOTES  
OF WORTHY CHIEF SECRETARY KHYBER PAKHTUNKHWA  
UNDER KP RIGHT TO INFORMATION ACT 2013.**

Respected Sir,

With due respect it is requested that the attested copies of the approved notes of Worthy Chief Secretary Govt. of Khyber Pakhtunkhwa regarding the following Notifications may be provided under Khyber Pakhtunkhwa Right to Information Act 2013.

1. Notification No. SO (E) H-II/3-18/2016 dated: 17.10.2017.
2. Notification No. SOH (E-II)/1-5/2017 dated: 01.11.2017.
3. Notification No. SOH (E-II)/1-5/2017 dated: 21.11.2017.
4. Notification No. SOH (E-II)/3-18/2016 dated: 26.06.2018.

Dated: 26.09.2018

*Dr. Rizwanullah Khan*  
26/9/18

**Dr. Rizwanullah Khan**  
C/O Ayub Khan Shinwari, Advocate  
7-A, Haroon Mantion, Soekarno Chowk  
Peshawar City  
Contact # 0333-2688121  
N.I.C # 17301-8022561-1

① *Dr. Rizwanullah Khan*  
Cc  
26-9-18

1. Chief Secretary Govt. of Khyber Pakhtunkhwa.
2. Commissioner Right to Information Commission 7<sup>th</sup> Floor Tasneem Plaza Peshawar Cantt.

SH-DY: NO: 881  
Dated: 26/09/2018

**ATTESTED**



The Commissioner  
Khyber Pakhtunkhwa  
Right to Information Commission  
7th Floor Tasneem Plaza Peshawar Cantt.

**APPLICATION FOR ATTESTED COPIES OF APPROVED NOTES  
OF WORTHY CHIEF SECRETARY KHYBER PAKHTUNKHWA  
UNDER KP RIGHT TO INFORMATION ACT 2013.**

Respected Sir,

With reference to my application dated: 26.09.2018 address to worthy Health Secretary Government of Khyber Pakhtunkhwa regarding subject cited above to provide me approved notes of worthy Chief Secretary Khyber Pakhtunkhwa regarding the following notifications:

1. Notification No. SO (E) H-II/3-18/2016 dated: 17.10.2017.
2. Notification No. SOH (E-II)/1-5/2017 dated: 01.11.2017. ✓
3. Notification No. SOH (E-II)/1-5/2017 dated: 21.11.2017.
4. Notification No. SOH (E-II)/3-18/2016 dated: 26.06.2018.

It is submitted that no action has been taken so far by the concerned Health Department Khyber Pakhtunkhwa.

It is requested to you under Khyber Pakhtunkhwa Right to Information Act 2013 that the Health Department Khyber Pakhtunkhwa may be directed to provide approval of each above mentioned notifications.

*[Handwritten Signature]*  
29/10/18

Dr. Rizwanullah Khan  
C/O Ayub Khan Shinwari, Advocate  
7-A, Haroon Mantion, Sockarno Chowk  
Peshawar City  
Contact # 0333-2688121  
N.I.C # 17301-8022561-1

Dated: 29.10.2018

1. Chief Secretary Govt. of Khyber Pakhtunkhwa.

*[Handwritten Signature]*  
29-10-18

KP RTI COMMISSION
REG. NO. 6058
DATE 29-10-18
FILE NO. 207

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

No. DS-II/HD/1-30/RTI Act/2013  
Dated Peshawar the 3<sup>rd</sup> July, 2020

11  
Pne  
07/7  
0.4/2

To ✓  
The Assistant Registrar  
KP Information Commission,  
Peshawar.

KP-RTI COMMISSION
Diary No: 2306
Date: 06-07-2020
Section: Adh

Subject: **COMPLAINT AGAINST NON SUPPLY OF INFORMATION  
(COMPLAINT NO.5356)**

Please refer to your letter No.KPIC/AR/1-5356/19/921-23 dated 10-02-2020 regarding proceedings of the Commission, held on 29<sup>th</sup> January, 2020 on the subject noted above wherein it had been directed to provide requested information to the complainant.

2. Accordingly, Section Officer (E-II) Health was directed to implement the above decision of the Commission in terms of provision of the desired information to the complainant within-03 working days under intimation to the Commission vide this office letter of even No. dated 17-02-2020 with a copy thereof endorsed to you & others **(copy enclosed)**.

3. Again, Section Officer (E-II) Health was directed to confirm whether the above information has been provided to the complainant/RTI Commission alongwith documentary evidence(s) or otherwise vide this office letter dated 01-07-2020 **(copy enclosed)**.

4. Now, Section Officer (E-II) has intimated that the details regarding complaint No.5356 have already been shared with Assistant Registrar KP RTI Commission vide his letter dated 14-02-2019 for examination and its provision to the complainant **(copy enclosed)**. Nonetheless, he has submitted copies of the available requested information as per following details:-

**ATTESTED**

Notification No. & date	Requested information	Status/Ramarks
Notification No.SO (E)/H-II/3-18/2016 dated 17-10-2017;	Copy of approved Note for Chief Secretary Khyber Pakhtunkhwa	Copy of the Note to this effect is not available in the relevant record as per information of SO(E-II) vide his letter dated 02-07-2020
Notification No.SO(H-E-II)/H-II/1-5/2017 dated 01-11-2017;	Copy of approved Note for Chief Secretary Khyber Pakhtunkhwa	Copy of the Note to this effect is available at <b>(Annex-III)</b> as per information of SO(E-II) vide his letter dated 02-07-2020

Notification No.SOH(E-II)/H-II/1- 5/2017 Dated 21-11-2017;	Copy of approved Note for Chief Secretary Khyber Pakhtunkhwa	Copy of the Note to this effect is not available in the relevant record as per information of SO(E-II) vide his letter dated 02-07-2020
Notification No.SOH(E-II)/H-II/3- 18/2016 dated 26-06-2018	Copy of approved Note for Chief Secretary Khyber Pakhtunkhwa	Copy of the Note to this effect is available at <b>(Annex-III ibid)</b> as per information of SO(E-II) vide his letter dated 02-07-2020

Foregoing in view, it is kindly requested to place copy of Section Officer (E-II) letter dated 02-07-2020 alongwith enclosures before the Commission for implementation of its decision/proceedings, held on 29<sup>th</sup> January, 2020; conveyed vide your letter dated 10-02-2020.

Encls: As above (44- pages)

  
Deputy Secretary (Estt)/  
The then DS-II/PIO

Copy forwarded for information to the:

1. The Section Officer (E-II) Health Department with reference to his letter quoted above.
2. PS to Secretary, Health Department, Peshawar.

  
Deputy Secretary (Estt)/  
The then DS-II/PIO

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

13

No.SO (E) H-II/1-5/2020  
Dated Peshawar, the 2<sup>nd</sup> July, 2020

To

The Deputy Secretary Establishment,  
Health Department,  
Government of Khyber Pakhtunkhwa.

Subject: **PROVISION OF INFORMATION UNDER RIGHT TO INFORMATION  
ACT, 2013**

Reference your office letter No. DS-II/ HD/1-30/ RTI Act/ 2013 dated 1<sup>st</sup>  
July, 2020 on the subject noted above.

The details regarding complaint No 5356 were shared with Assistant Registrar KP RTI  
Commission vide this department letter dated 14<sup>th</sup> Feb, 2019 for examination and its  
provision to complainant. (F/A).

The details/approval regarding Notification No. SOH(E-II)/ H-II/ 1-5/ 2017 dated 01-  
11-2017 is at Annex-I and regarding Notification No. SOH(E-II)/ H-II/3-18/2016  
dated 26-06-2018 is at **Annex-II**.

As per statement of Mr. Jaffar Shah Sr. Clerk/ Record Keeper the details of  
Notification No. SO (EII)/3-18/2016 dated 17-10-2017 and SOH(E-II)/ H-II/1-5/  
2017 are missing.

The details and statement of Sr. Clerk are enclosed for perusal and further necessary  
action please.

*Javed*  
02/07/2020  
Section Officer (E-II)

Copy forwarded to:-

1. The Registrar, RTI Commission 7<sup>th</sup> floor Tasleem Plaza new Benevolent fund  
Buildings 06<sup>th</sup> sadder road peshawar.
2. PS to Secretary Health, Khyber Pakhtunkhwa.

*Javed*  
Section Officer (E-II)

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)

14

No.SOR-II(E&AD)1-20/08  
Dated Peshawar 08.09.2020

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Health Department.

**SUBJECT: - REQUEST FOR WITHDRAWAL OF NOTIFICATION DATED 21.11.2017**

Dear Sir,

I am directed to refer to the subject above and to enclosed here with copy of Appeal of Dr. Rizwanullah Khan, Director (HRM) DGHS office Peshawar addressed to Chief Secretary Khyber Pakhtunkhwa and to state that approval of the competent authority may be provided at the earliest; for issuance of Health Department Notification No.SOH(E-II)/1-5/2017 dated 21<sup>st</sup> November, 2017 whereby earlier Notification No.SOH(E-II)/1-5/2017 dated 01<sup>st</sup> November, 2017 was withdrawn.

Yours faithfully,

**Encls: As above**

*[Signature]* 8/9/2020  
SECTION OFFICER (R-II)  
Phone No.9211785

**ATTESTED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

NOTE FOR CHIEF SECRETARY

1322  
27/2/18

Subject: FAMILY PENSION CASE IN RESPECT OF DR. SHAH ROOM EX-MO BS-17 UNDER CSR, PENSION RULES, AND COURT DECISIONS.

Dr. Shah Room, ex- Medical Officer, bs-17 passed away on 09.08.2009 after serving the provincial Health Department with effect from 26-11-1995 in capacities of adhoc, contract and regular medical officer. The obituary of the doctor concerned is placed at **Flag-A.**

2- The wife of the deceased doctor submitted an application for the release of family Pension; however, his family pension case could not be materialized due to various bars and reasons as enunciated in the succeeding paragraphs (**Flag-B**).

3- Three different situations unfolded with the rise of different developments in the case of the doctor concerned. All the three situations are summarized here, so that a well informed decision can be reached at.

4- **Situation 1:**

The doctor concerned died on 09-08-2009, whereas he was regularized under the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 with effect from 24-10-2009 that is after two months and 15 days of demise of doctor concerned. Section 3 of the Act, which is operative section, stipulates, as reproduced verbatim, as: "All employees including recommendees of the High Court appointed on contract or adhoc basis and holding that post of 31-12-2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post". (**Flag-C**)

5- A clear disappointing inference that can be made from the above situation is that the doctor concerned had not performed any regular service till his

**ATTESTED**

death, despite the fact that he had been serving the department since 26-11-1995. This unabled the family of the doctor to get any benefit at all.

6- **Situation 2:**

This department has, on 17<sup>th</sup> October, 2017, issued a notification in pursuance of judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act, 2013 with effect from dates as mentioned against each vide which the services of the doctor concerned were regularized with effect from 01-07-2001 appearing at serial no. 68 (**Flag-D**).

7- Upon examination again for processing the family pension case, the regular service of the doctor concerned came out to be 8 years, 1 month and 8 days, which again is not significant enough to enable his family to receive pension. Even condonation under Pension Rules can be granted upto one year only by the Finance Department.

8- In both Situation 1 and 2, the department is constrained to ignore the contract service of the doctor concerned with effect from 1995 onwards, thus not allowing his family any benefit cognate with it.

9- **Situation 3:**

The concerned was appointed on 26-11-1995, and was regularized once in 2009 [as elucidated in situation 1], and subsequently, regularized with effect 01-07-2001 in supersession of the first regularization order, and ultimately the doctor died in 2009.

10- If the situation 3 is analyzed in the light of Rule 2.3 of the West Pakistan Civil Service Pension Rules, 1963, which is also reproduced in *to to*, then the family of the doctor concerned is entitled to family pension and will be relieved in conjunction with the fact that this will give recognition to the services of the deceased doctor too:

**ATTESTED**

**"2.3: Temporary and officiating service** Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servant borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity."

11- The following rules coupled with various court decisions support the case of the deceased doctor for the release of family pension with effect from his initial date of appointment till the date of his demise:

a. Civil Service Regulation 371-A states that "Notwithstanding anything contained in Articles-355(b), 361, 370 & 371 of these regulations, temporary and officiating service, in case of Govt. servant who retired on or after the 1<sup>st</sup> January 1949, or who joined service thereafter, shall count for pension according to following rules:-

(i). Govt. servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken period of temporary service, if any, rendered previously, and

(ii). Continuous temporary and officiating service of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

b. The above provision of CSR has been interpreted vide reported judgment of Supreme Court of Pakistan in PLD 2016 Supreme Court

**ATTESTED**



534 while deciding Civil Appeal No.1072/2005 and Civil Appeal No.686/2012 dwelling upon the judgment passed in case of Mir Ahmad Khan Vs secretary to Govt [ 1997 SCMR 1477] stating therein that "a Govt Servant.....after a minimum service of only five years would automatically entitled to pension. Holding so would be against the object and spirit of the concept of pension (**Flag-E**).

c. Similarly, Peshawar High Court Peshawar in WP NO.1168-P/2014 in case titled as Baghi Shah S/O Alam Shah Vs the Govt of Khyber Pakhtunkhwa through Secretary Finance & others while interpreting Rule 2.3 of West Pakistan Civil Service Pension Rules, 1963 accepted the Petition and set aside the impugned order of the respondents and directed them to finalize the pension case of petitioner within a period of two months positively. The decision was announced on 09 September, 2014 (**Flag-F**)

d. Furthermore, in Writ Petition No. 3394-P/2016 coupled with Writ Petitions Nos. 2867-P/2016, 3143-P/2014, 2872-P/2014, 1339-P/2014, 55-P/2015, Peshawar High Court Peshawar allowed the Writ Petitions and issued a writ to the respondent departments to issue pension of the deceased employees to the petitioners/LRs of the deceased. The Judgment was announced on 22.06.2017 (**Flag-G**).

---

12- In the light of above, the family pension of the deceased may be allowed under CSR 371-A, Pension Rule 2.3 and on the analogy of decisions of Peshawar High Court, Peshawar in Writ Petition nos. 1168-P/2014 and 3394-P/2016 along with connected cases by allowing to count his service with effect from his initial date of appointment in the year 1995.

13- Keeping in view, the humanitarian aspect of the case the guidelines of Chief Secretary Khyber Pakhtunkhwa is solicited before the views of the Finance Department, Khyber Pakhtunkhwa, so that a direction is set for the Finance

---

**ATTESTED**

Department to examine the case in light of above quoted rules and court decisions.

14- Para 12 and 13 are submitted for perusal, guidelines and order of Chief Secretary, Khyber Pakhtunkhwa, please.

RF No. 107  
Date 20.2.18  
Secretary Health



HD-5426

SE

*(Signature)*  
(Muhammad Abid Majeed)  
Secretary Health.

Chief Secretary,  
Khyber Pakhtunkhwa.

1322  
23/2/18

Ps / Secy (E) & AD  
Diary No. 454  
Dated 20/2/18

N.P.P

**ATTESTED**


15. Note for Chief Secretary Khyber Pakhtunkhwa regarding family pension in respect of Dr. Shah Room, Ex-Medical Officer (BS-17) under CSR, Pension Rules and Court decision has been examined.

16. Dr. Shah Room was initially appointed as Medical Officer on 26.11.1995 on contract basis. The doctor concerned passed away on 09.08.2009. Health Department has regularized the services of the doctor concerned and others in light of Peshawar High Court Judgment w.e.f 01.07.2001 (Annex-D).

17. In the light of Rule 2.3 of the West Pakistan Civil Service Pension Rules, 1963 "Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

18. Finance Department being custodian of Pension Rules may add views whether after including the temporary service the deceased has the required qualifying service for family pension.

Secretary Finance

  
(ARSHAD MAJEED)  
Secretary Establishment  
March 1, 2018

Ps / Secy (E) & AD  
Diary No. 454  
Dated 01-03-18

Secretary  
Khyber Pakhtunkhwa  
Diary No. 279  
02/03/18  
15/3/18

**ATTESTED**

N.P.P

Subject: FAMILY PENSION CASE IN RESPECT OF DR. SHAH ROOM EX-MO BS-17 UNDER CSR, PENSION RULES AND COURT DECISION

19. Financial Department has examined the Note for Chief Secretary. The Health Department has analysed and elaborated the case in detail in the preceding paras. In light of various court judgments mentioned at para-6 and para-11, CSRs and Pension Rules of the Government of Khyber Pakhtunkhwa, the proposal of Establishment Department contained at para-17 of the Note is endorsed for approval of the Chief Secretary, Khyber Pakhtunkhwa thereby making entitled the family of Late Shah Room Ex-Medical Officer of Health Department to draw his family pension.

Secretary Finance  
Khyber Pakhtunkhwa  
Diary No. 272  
Date: 15/3/18

*[Signature]*  
15.3.18

(Shakeel Qadir Khan)  
Secretary, Finance Department

Chief Secretary

*[Large handwritten mark]*

6613/CP  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

Secy Health

*[Signature]*  
19/3/18  
Copy not m/a

*[Signature]*  
E-11

*[Signature]*  
19/03

Case No. 1222  
Date: 16/3/18

**ATTESTED**



5959  
Govt  
Date 09/07/18

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Dated Peshawar the 26<sup>th</sup> June 2018

**NOTIFICATION**

**NO.SOH(E-II)/3-18/2016** The competent authority is pleased to accord sanction to the family pension to the widow of Dr. Shah Room s/o Hussan Badshah, Ex-Medical Officer, BS-17 attached to DHO Mardan under Rule 2.3 of West Pakistan Civil Service Pension Rules 1963 subject to deposit of pension contribution for a period affective from 26.11.1995 to 30.06.2001 in the Govt. Treasury by his family.

**SECRETARY HEALTH  
KHYBER PAKHTUNKHWA**

**Endst. No. & Date even.**

Copy to:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department for information with respect to endorsement of the proposal vide Para-19 dated 15.03.2018 in Note for Chief Secretary titled as family pension case in respect of Dr. Shah Room Ex-MO, BS-17 under CSR, Pension Rules and Court Decision.
3. Director General Health Services, Khyber Pakhtunkhwa.
4. DHO Mardan.
5. DAO Mardan.
6. PS to Secretary Health Khyber Pakhtunkhwa.
7. Doctor concerned.

(Jibreel Raza)  
**SECTION OFFICER (E-II)**

**ATTESTED**



**TO BE SUBSTITUTED FOR THE SAME NO. AND DATE**

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

**Dated Peshawar the 26<sup>th</sup> June 2018**

**NOTIFICATION**

**NO.SOH(E-II)/3-18/2016** The competent authority is pleased to accord sanction to the family pension to the widow of Dr. Shah Room s/o Hussan Badshah, Ex-Medical Officer, BS-17 attached to DHO Mardan under Rule 2.3 of West Pakistan Civil Service Pension Rules 1963.

**SECRETARY HEALTH  
KHYBER PAKHTUNKHWA**

**Endst. of even No Dated 04<sup>th</sup> April 2019**

Copy to:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. Director General Health Services, Khyber Pakhtunkhwa.
4. DHO Mardan.
5. DAO Mardan.
6. PS to Secretary Health Khyber Pakhtunkhwa.
7. Doctor concerned.

*[Handwritten Signature]*  
**SECTION OFFICER (E-II)**

**ATTESTED**

24

**1<sup>ST</sup> REMINDER**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)**

No.SOR-II(E&AD)1-20/08/42-WE  
Dated Peshawar 06.11.2020

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Health Department.

**SUBJECT: - REQUEST FOR WITHDRAWAL OF NOTIFICATION DATED  
21.11.2017**

Dear Sir,

I am directed to refer to this department letter of even number dated 08.09.2020 (copy enclosed for ready reference) on the subject noted above and to state that approval of the competent authority in the subject matter is still awaited which may please be expedited.

**Encl: As above**

Yours faithfully,

**SECTION OFFICER (R-II)  
Phone No.9211785**

dy  
LK  
06.11.20

2<sup>nd</sup> REMINDER



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)

No. SOR-II(E&AD)1-20/08  
Dated Peshawar 16.12.2020

25

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Health Department.

**SUBJECT: REQUEST FOR WITHDRAWAL OF NOTIFICATION DATED  
21.11.2017**

Dear Sir,

I am directed to refer to this department letter of even number dated 08/09.2020 (copy enclosed for ready reference) on the subject noted above and to state that approval of the competent authority in the subject matter is still awaited which may please be expedited.

**Encl: As above**

Yours faithfully,

  
17/12/2020  
SECTION OFFICER (R-II)  
Phone No.9211785



26

**3<sup>rd</sup> REMINDER**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)**

No.SOR-II(E&AD)1-20/08  
Dated Peshawar 13.01.2021

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Health Department.

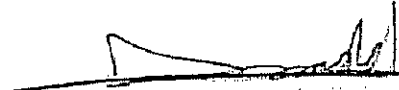
Subject: - REQUEST FOR WITHDRAWAL OF NOTIFICATION DATED  
21.11.2017

Dear Sir,

I am directed to refer to this department letter of even number dated 08.09.2020 (copy enclosed for ready reference) on the subject noted above and to state that approval of the competent authority in the subject matter is still awaited which may please be expedited.

Yours faithfully,

Encl: As above

  
SECTION OFFICER (R-11)  
Phone No.9211785



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

27

No. SOH(E-II)/3-18/2021(Dr. Rizwanullah Khan)

Dated: 27<sup>th</sup> April, 2021

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment & Admn: Department.

Attention: **Section Officer (R-II)**

Subject: **REQUEST FOR WITHDRAWAL OF NOTIFICATION DATED 21.11.2017**

I am directed to state that with reference to your letter No. SOR-II(E&AD)1-20/08 dated 08.09.2020 on the subject cited above, the approval of Worthy Chief Secretary, Government of Khyber Pakhtunkhwa regarding the Withdrawal Notification No. SOH(E-II)/1-5/2017 dated 21.11.2017 is not available on the record.

Encl: As Above:

Section Officer (E-II)

Endst: No. & Date Even

Copy to the:

1. Director General Health Services, Khyber Pakhtunkhwa.
2. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
3. PS to Special Secretary (E&A / B&D), Health Department.
4. PA to Additional Secretary (E&A /B&D), Health Department.
5. PA to Deputy Secretary (Estab), Health Department.
6. PA to Deputy Secretary (Litigation), Health Department.

Section Officer (E-II)

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Sajjad Ali Shah

**C.A.No.189-P of 2010, C.M.A.No.948-P of 2014 in C.A.No.189-P, C.A.No.260-261-P of 2018, C.P.No.107-P/2018, C.As.No.1418/2019, 1018-1019/2014, C.A No.269/2015 and C.A.No.257/2017**

[Against the order dated 22.07.2009, passed by the Peshawar High Court, Peshawar in Interim Relief (N) with C.O.C. No.78/2009 in W.P No.460/2007, judgment dated 18.01.2013, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.1915/2009, judgment dated 13.12.2017, passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in W.P.No.926-M/2011, judgment dated 14.12.2016, passed by the Punjab Service Tribunal, Lahore in Appeal No.200/2014, judgment dated 07.04.2014, passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in ICAs No.118-117/2013, order dated 11.11.2014, passed by the Peshawar High Court, Peshawar in W.P.No.544-P/2014 (M) with CM No.807-P/2014 and judgment dated 16.12.2014, passed by the Peshawar High Court, Peshawar in W.P No.1360-P/2012]

In C.A.No.189-P/10, : Dr. Rizwanullah & others vs.  
C.M.A.No.948-P/14 in Javed Iqbal, Chief Secretary,  
C.A.No.260-P/18 NWFP & others.  
In C.A.No.261-P/2018 : Dr. Farooq. vs. Govt. of KP  
through Chief Secretary Peshawar  
& others.  
In C.P.No.107-P/18 : Govt. of KP through Chief  
Secretary, Peshawar and others  
vs. Dr. Manzoor Ahmad.  
In C.A.No.1418/19 : Secretary to Government of the  
Punjab, Lahore etc. vs.  
Muhammad Altaf.  
In C.A.No.1018/14 : The Secretary Special Education  
Department, Govt. of Punjab &  
another vs. Muhammad Azam,  
Braille Teacher.  
In C.A.No.1019/14 : Muhammad Azam, Braille Teacher  
vs. Secretary Special Education  
Department, Lahore & others.  
In C.A.No.269/2015 : Pakistan Broadcasting Corporation  
through its Director General, PBC,  
Islamabad and others. vs.  
Jangraiz Khan and another.

**ATTESTED**

  
Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

- In C.A.No.257/2017 : Miss Yasmin Begum and others.  
vs. Administrator Auqaf, Khyber  
Pakhtunkhwa Peshawar and  
another.
- Appellant No.1 : Dr. Rizwan Ullah, in person.  
(in CA No.189-P) and  
Appellant  
(in CA No.260-P
- For Appellants No.2-36 : Mr. Waseem ud Din Khattak,ASC  
(in CA No.189-P) and Mr. Muhammad Ajmal Khan, ASC  
Appellant (in CA No.261-P
- For the Applicant (s) : Mr. Muhammad Shoaib Shaheen,  
(in CMA No.948-P ASC
- For the Petitioner (s) : Mr. Zahid Yousaf Qureshi,  
(in CP No.107-P) & Addl.A.G.KP  
For Respondent (s)  
(in CA No.189-P & C.As  
No.260-261)  
For Appellant in CA 269/15 : Mr. Shahid Mahmood Khokh ar. ASC
- For the Appellant (s) : Mr. Shaukat Rauf Siddiqui,  
(in CA No.1418) Addl.A.G. Punjab  
Rao Mustafa, Supdt. Food  
Department, Punjab  
Muhammad Rizwan, Assistant.  
Mr. Misbah Ullah Khan. ASC
- For Appellant in CA 257/17 : Mr. Shaukat Rauf Siddiqui,  
Addl.A.G. Punjab  
Faisal Mukhtar, Law Officer  
(Special Education Punjab)  
In Person.  
Mr. Nasir Mahmood. ASC
- For the Appellant (s) : Nemo.  
(in CA No.1019) &  
For the Respondent (s)  
(in CA No.1018)  
R. in CA 1418/19  
R. in CA 257/17  
R. 7 & 21 in CA 189-P/1  
Remaining Respondent in CA 189-P/1  
Date of Hearing : 15.01.2020  
Nemo,  
Ex Parte.

**ORDER**

**Gulzar Ahmed, CJ.—**

**C.M.A.No.948-P/2014.**

Learned counsel does not press this application, which  
is dismissed as such.

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

**C.A.No.189-P/2010.**

2. We have heard the Appellant No.1 (Dr. Rizwanullah Khan), who has appeared in person and counsel appearing for the remaining appellants so also learned Addl.A.G. KP.

3. The impugned order dated 22.07.2009 was passed on C.O.C. No.78/2009, which was a contempt petition filed for implementation of the judgment dated 18.11.2008, passed in Writ Petition No.460/2008. It seems that appellants have claimed seniority from the date of their contract appointment, which by the impugned order was not allowed to them. We have asked the appellant, who is appearing in person so also the counsel for the remaining appellants to show us from the judgment dated 18.11.2008 that such relief has been granted to the appellants, the operative part of the judgment dated 18.11.2008, was read by the learned counsel for the appellants, but he could not show that relief of seniority from the date of contract appointment was granted by the said judgment. The relief having not been granted by the judgment, the question of its contempt did not arise and in our view, in the impugned order, the observation of the learned Division Bench of the High Court that such a relief cannot be granted is an apt one, to which no interference is called for. Consequently, we find no merit in this appeal; the same is, therefore, dismissed.

**C.A.No.260-P/2018.**

4. Initially benefit of seniority including that of pension was granted to the appellant, Dr. Rizwanullah Khan, SMO (BS-18) vide Notification dated 01.11.2017. Such Notification subsequently

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

was withdrawn vide Notification dated 21.11.2017 stating that it was issued by way of inadvertence. It is informed by the appellant, Dr. Rizwanullah Khan that he has filed service appeal against this very Notification dated 21.11.2017, which is pending before the KP Service Tribunal. The present appeal has been filed against the judgment dated 18.01.2013 of the KP Service Tribunal, Peshawar, whereby the appeal of the appellant was dismissed, the operative part thereof is as follows: -

"In view of the above, the Tribunal while agreeing with the arguments of the learned AAG is of the view that the appellant might have a case of regularization of his service as Medical Officer w.e.f. 1.1.2004 or any other appropriate date on or in between the date mentioned in Section 19 of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 subject to the condition that the appellant remained in service on contract basis on that date. But neither the appellant nor the respondents produced any documents to prove that the appellant was in service on contract basis on this date. Moreover, the appellant has not properly prayed for the same either in his departmental appeal nor in the appeal before this Tribunal. The case of Dr. Muhammad Iqbal Medical Officer as referred to by the appellant is altogether a different case and that the said order has not been challenged by the appellant and neither he applied to the competent authority (i.e. the Governor) for similar treatment. The appellant failed to make out a case for indulgence of the Tribunal, so we dismiss the appeal."

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

5. The appellant, who is present in person, has not been able to point out any illegality in the impugned judgment. He has stated before us, candidly, that he has challenged the Notification dated 21.11.2017 and such appeal of his is pending before the KP Service Tribunal. In this view of the matter, we find no merit in this appeal. The same is therefore, dismissed.

**C.A.No.261-P of 2018.**

6. After arguing the matter at some length, learned counsel for the appellant wishes to withdraw this civil appeal and states that the appellant is going to avail proper remedy before the proper forum. The appeal is, therefore, dismissed as withdrawn.

**C.P.No.107-P/2018.**

7. Learned Addl.A.G. KP, contends that initially the respondent was appointed as Medical Officer in the year 1993. Through Notification dated 13.03.2004, the respondent was appointed as District Children Specialist (BPS-18), purely on contract basis and till availability of the selectee of NWFP (Now KP) Public Service Commission (**the Commission**). The candidate from the Commission did join the service, whereupon the service of the respondent was remitted to his parent department, which was challenged by the respondent stating that he should be regularized in the position of District Children Specialist (BPS-18). The very reading of the Notification dated 13.03.2004 shows that it was purely a contract employment and till the availability of a candidate from the Commission and thus, the relief as has been granted to the respondent by the impugned judgment of the High Court, is not sustainable.

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

8. The contentions raised by the learned Addl.A.G. require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same preferably after three months.

9. C.M.A. No.190-P of 2018 is allowed and the operation of the impugned judgment is suspended.

**C.A.No.1418/2019**

10. We have heard the learned Addl.A.G. Punjab so also the respondent, who has appeared in person. The respondent has specifically referred to the order dated 26.04.2004 by which the services of three Junior Clerks, namely, Muhammad Afzal Jam, Malik Altaf Hussain and Zafer Hussain, were regularized from the date of their *ad hoc* appointment i.e. 03.10.1987, and the order dated 28.08.2009, by which Abdul Ghafoor, Junior Clerk of District Food Controller, Sahiwal, appointed on *ad hoc* vide Office Order dated 20.12.1989, was confirmed as Junior Clerk with retrospective effect i.e. from the date of his *ad hoc* appointment. When confronted with these two orders, learned Addl.A.G. concedes that the case of the present respondent is similar to that of above noted orders, issued by the Government.

11. The Tribunal in the impugned judgment has also granted relief to the respondent similar to the one granted by the two orders noted above and we find no justification, legal or factual, on the basis of which the impugned judgment could be interfered with. The appeal is, therefore, dismissed.

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



C.As.No.1018-1019/2019.

12. Learned Addl.A.G. Punjab has contended that Respondent No.1 (the respondent) was appointed as *ad hoc* employee on 12.12.1990. His service was regularized as Teacher vide order dated 22.11.2007 and since then, all benefits are being paid to the respondent. He contends that the High Court in the judgment has granted all back benefits, allowances and funds, etc., from the date of his appointment as an *ad hoc* employee, which is not supported in law, in that, no benefits or allowances could be granted to the employee, who was appointed on *ad hoc* basis and subsequently regularized and such benefits are only payable from the date he is regularized. He contends that there is no law to the effect that back benefits, allowances and funds to be allowed from the date of *ad hoc* appointment and none has been cited in the impugned judgment.

13. Learned counsel for the respondent has appeared and stated that although the respondent has engaged her initially but no further instructions have been given to her and thus, pleaded no instructions.

14. In the circumstances, let notice be issued to the respondent to appear in Court on the next date of hearing. Notice be also issued to the appellant in Civil Appeal No.1019/2019 to the same effect.

C.A.No.269/2015.

15. The High Court in the impugned order dated 11.11.2014 has imposed cost of Rs.50,000/- on Ms. Nuzhat Yasmeen on the allegation that she has committed gross

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

negligence. The respondent although is served but he is not in attendance. He is, thus, proceeded against *ex parte*. The only element of cost being under challenge and such having been done so without giving an opportunity of hearing to Ms. Nuzhat Yasmeen, in our view, such imposition, apparently, was not in accordance with law and also harsh one.

16. In the circumstances, we allow this appeal to the extent that the impugned order of imposing of cost of Rs.50,000/- on Ms. Nuzhat Yasmeem is set aside and the appeal is allowed in the above terms.

**C.A.No.257/2017.**

17. We have heard the learned counsel for the parties. The appellant No.1 was appointed as a Teacher vide order dated 28.03.2002 on fixed salary of Rs.4,000/- p.m. for a period of one year extendable from time to time. The other appellants were also appointed vide separate orders on fixed salary ranging from Rs.3,000/- to Rs.4,500/- p.m. for a period of one year extendable from time to time. The appellants filed a writ petition in the Peshawar High Court, Peshawar seeking regularization of their services. The High Court in the impugned judgment dated 16.12.2014, has found that the Provision of KPK, Employees (Regularization of Services) Act, 2009 (**the Act of 2009**) were not applicable to the case of the appellants and thus, they were not entitled to regularization under the said Act.

18. The High Court in the impugned judgment has also made reference to the relevant law and the judgment of this Court passed in Suo Moto Case No.15/2010, etc. (2013 SCMR 304) and

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

also the judgment in the case of Tehsil Municipal Officer, TMA, Kahuta and another vs. Gul Fraz Khan (2013 SCMR 13), in relying upon its conclusion to dismiss the writ petition filed by the appellants.

19. Learned counsel for the appellants has not been able to show us as to how the benefit of the Act of 2009, could be given to the appellants and more so, he has not been able to show that the impugned judgment has suffered from any illegality. Such being the position on the record, we find no merit in this appeal.

The same is, therefore, dismissed.

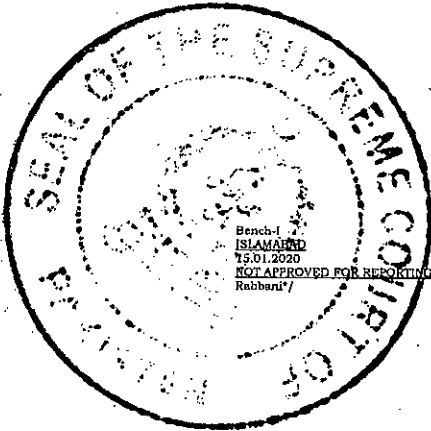
Sd/-HCJ

Sd/-J

Sd/-J

**Certified to be True Copy**

*J*  
Senior Counsel Associate  
Supreme Court of Pakistan  
Islamabad



GR No! 827/20 civilian  
Date of Presentation: 15-1-20  
No of Words: 2700  
No of Folios: 82  
Requisition Fee Rs: 16.25  
Copy Fee in: 21.25  
Date of Completion of Copy: 18/1/20  
Date of delivery of Copy: 25-1-2020  
Compared by/Prepared by: [Signature]  
Received by: [Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 17<sup>th</sup> October, 2017

**NOTIFICATION**

**NO. SO(E)H-III/3-18/2016:** In pursuance of Judgment of Peshawar High Court Peshawar dated 18-11-2008 in Writ Petition No. 1510 of 2007 read with sub section 2 of Section 2 of the Khyber Pakhtunkhwa, Civil Servant (Amendment) Act, 2005 (Khyber Pakhtunkhwa Act no. IX of 2005) and provision under sub section 4 of section 19 of Civil Servant (Amendment) Act 2013 coupled with the regularization order of appellants and similarly placed w-e-f 2005, the services of following doctors (appellants as well as similarly placed) are hereby regularized with effect from dates as mentioned against each:

S. #	Name of Doctor	D.O.B / Domicile	Date of Initial Appointment on contract basis	Date of Regularization under Act 2005
1	Dr. Bakht Zada S/O Gul Muhammad, MBBS	01.01.1959 / Swat	23.11.1995	01-07-2001
2	Dr. Dawa Khan S/O Badshah Khan MBBS	01.09.1951 / Swat	23.11.1995	01-07-2001
3	Dr. Haroon Nasir Khattak S/O Rab Nawaz MBBS	Karak / 1.3.1966	23.11.1995	01-07-2001
4	Dr. Yousaf Khan S/O Said Rehman MBBS	Mardan / 14.3.1968	23.11.1995	01-07-2001
5	Dr. Riaz Ahmed S/O Rehmatullah MBBS	Mohmand A / 15.8.1951	23.11.1995	01-07-2001
6	Dr. Alamgir Khan S/O Darwesh Khan, MBBS	16.04.1962 / Mohmand A	23.11.1995	01-07-2001
7	Dr. Muhammad Ajmal Khan S/O Zarin Khan MBBS	Mohmand ag / 10.04.67	23.11.1995	01-07-2001
8	Dr. Fazal Rehman S/O Muhammad Amir Khan, MBBS/ MPH	28.04.1966 / Mohmand Agency	23.11.1995	01-07-2001
9	Dr. Mustafa S/O Behramand, MD	01.03.1961 / Swat	24.11.1995	01-07-2001

Secretary  
Health Department  
Government of Khyber Pakhtunkhwa

	Jamil Ahmad S/O Abdullah, MD	24.04.1967 Swat	24.11.1995	01-07-2001
	Dr. Rizwanullah S/O Amanullah Khan, MBBS	20.12.1962 / Peshawar	25.11.1995	01-07-2001
12.	Dr. Munir Hussain S/O Manzoor Hussain	28.05.1968 / Peshawar	25.11.1995	01-07-2001
13.	Dr. Zaffar Iqbal S/O Muhammad Amin	26.02.1964 / Peshawar	25.11.1995	01-07-2001
14.	Dr. Nazir Ahmad Khalil S/O Jan Muhammad Khan	08.04.1960 / Peshawar	25.11.1995	01-07-2001
15.	Dr. Javed Iqbal S/O Muhammad Qasim	01.03.1964 / Kohat	26.11.1995	01-07-2001
16.	Dr. Muhammad Zahid s/o Qaiser Ahmad, MBBS	18.5.1964/ Charsadda	26.11.1995	01-07-2001
17.	Dr. Rafiullah S/O Haji Khan Zada	31.12.1960 /Charsadda	26.11.1995	01-07-2001
18.	Dr. Anwar Saeed S/O Noor Muhammad	27.05.1968 / Charsadda	26.11.1995	01-07-2001
19.	Dr. Muhammad Ikram S/O Haji Abdul Hanan		26.11.1995	01-07-2001
20.	Dr. Zarshad Ahmad S/O Pir Muhammad	24.03.1966 / Charsadda	26.11.1995	01-07-2001
21.	Dr. Imtiaz Ahmad S/O Fazal Karim	23.12.1965 / Charsadda	26.11.1995	01-07-2001
22.	Dr. Shakir Ullah S/O Faqr Hussain M.D	Peshawar/ 11.02.1959	24.12.1995	01-07-2001
23.	Dr. Ali Shah S/O Fazli Ghaffoor	01.04.1962 / Charsadda	26.11.1995	01-07-2001
24.	Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah.	06.05.1960 /Charsadda	26.11.1995	01-07-2001
25.	Dr. Shabir Ahmad S/O Juma Khan	01.04.1963 / Kohat	26.11.1995	01-07-2001
26.	Dr. Habibullah Khan S/O Hamidullah Khan	10.06.1963 / Kohat	26.11.1995	01-07-2001

Section Officer-II,  
Govt. of F. Hyber Pakhtunkhwa  
Health Department.

Scanned by CamScanner

	Dr. Ahmad	15.04.1978	08.03.2005	08.03.2005
	Dr. Ahmad Ayaz	Swat		
	Dr. Anzab s/o	Dir(L)	08.03.2005	08.03.2005
	Dr. Bilal Samad Jan	3.12.1973		
	Dr. Arif Khan s/o	30.12.1978/	08.03.2005	08.03.2005
	Dr. Fazli Subhan, MBBS	Charsadda		
	Dr. Ajab Khan s/o	Charsadda/	08.03.2005	08.03.2005
	Dr. Ismail Khan MBBS	25.02.1979		
	Dr. Farhana d/o	L/Dir/	08.03.2005	08.03.2005
	Dr. Hussain Ahmad	07.08.1978		
671	Dr. Muhammad Zubair	Swat/	08.03.2005	08.03.2005
	Dr. Muhammad Bashir	01.04.1976		
672	Dr. Raz Muhammad s/o	Dir(L)	08.03.2005	08.03.2005
	Dr. Badshah Muhammad	15.3.1977		
673	Dr. Mushtaq Ahmad s/o	Dir (L)/	08.03.2005	08.03.2005
	Dr. Badshahul Mulk M.D	24.10.1978		
674	Dr. Fazal Wahid S/O	11.02.1971/	08.03.2005	08.03.2005
	Dr. Khana Gul, MD	Dir		
675	Dr. Nizamud Din s/o	Dir(L)/	08.03.2005	08.03.2005
	Dr. Qalandar Khan MBBS	10.3.1971		
676	Dr. Umar Hakeem s/o	Bajaur/	08.03.2005	08.03.2005
	Dr. Abdul Karim Khan	28.4.1971		
677	Dr. Nisar Ahmad s/o	Dir(L)/	08.03.2005	08.03.2005
	Dr. Amir Muhammad M.D	1.2.1971		
678	Dr. Sher Muhammad	NW Agency/	08.03.2005	08.03.2005
	Dr. Sakhi Murad MBBS	08.08.1976		
679	Dr. Naeemullah s/o	01.02.1981/	08.03.2005	08.03.2005
	Dr. Abdullah, MBBS.	Swat.		
680	Dr. Akhtar Ali s/o	Swat/	08.03.2005	08.03.2005
	Dr. Sarfaraz Khan MBBS	25.10.1977		

Section General,  
Govt. of Khyber Pakhtunkhwa,  
Health Department,

Note: Any omission/error will be rectified after verification.

SECRETARY HEALTH

Endt No of even and date.

1. Registrar, Peshawar High Court Peshawar.
2. Accountant General, Khyber Pakhtunkhwa.
3. Director General, Health Services, Khyber Pakhtunkhwa.
4. P.S.O to Chief Secretary, Khyber Pakhtunkhwa.
5. Coordinator PMRU, O/O Chief Secretary, Khyber Pakhtunkhwa.
6. All District Health Officers in Khyber Pakhtunkhwa.

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

1

Service Appeal No. 5795/2021

Dr. Haroon Khan,  
Project Director, Integrated Health Project,  
Khyber Pakhtunkhwa.




...APPLICANT

Versus

1. **The Government of Khyber Pakhtunkhwa,**  
Through Chief Secretary Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa,**  
Health Department,  
Civil Secretariat, Peshawar.
3. **Director General,**  
Health Services, Khyber Pakhtunkhwa,  
Peshawar.
4. **Section Officer (E-V),**  
Health Department,  
Peshawar.
5. **Dr. Niaz Muhammad.**  
Additional Director General (Admin)/ Director General,  
Health Services, Khyber Pakhtunkhwa,  
Peshawar.

.....Respondents

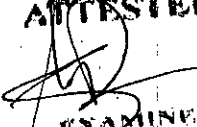
**ATTESTED**  
  
EXAMINING OFFICER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(2)

APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974  
AGAINST THE ORDER DATED 26.01.2021 WHEREBY  
THE APPELLANT HAS BEEN PREMATURELY  
TRANSFERRED FROM THE POST OF DIRECTOR  
INTEGRATED HEALTH PROGRAM AND TO REPORT  
TO THE DIRECTORATE GENERAL HEALTH  
SERVICES KHYBER PAKHTUNKHWA AGAINST  
WHICH HIS DEPARTMENTAL APPEAL HAS NOT  
REPLIED.

RESPECTFULLY SHEWETH:

1. That the Applicant besides being a law abiding citizen is a civil servant posted as Project Director in the Integrated Health Project.
2. That the Applicant was initially appointed as Medical Officer in the Department of Health, Khyber Pakhtunkhwa. Later on in the year 2008, the Petitioner was inducted in the Health Management cadre and vide Notification dated 08.05.2019 the Petitioner was promoted to BPS-20.  
*(Copy of Notification dated 08.05.2019 is annexed herewith marked as "A")*
3. That the Applicant was transferred to the post of Project Director (BPS-20), in the Integrated Health Program, Khyber Pakhtunkhwa vide Notification dated 17.01.2020.  
*(Copy of Notification dated 17.01.2020 is annexed herewith marked as "B")*
4. That not year has passed when on 26.01.2021 the Petitioner is prematurely transferred from the aforementioned post and has been directed to report to the Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar with immediate effect, Needless to mention that the Respondent No.5 who was already holding the additional charge of Director General, Health Services has yet again been assigned another additional charge of Project Director, Integrated Health Program.

**ATTESTED**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 5795/2021

Date of Institution ... 07.06.2021

Date of Decision ... 27.08.2021



Dr. Haroon Khan, Director, Integrated Health Program, Khyber Pakhtunkhwa.  
... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Government of  
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and four others.  
... (Respondents)

Present:

SYED HAZIQ ALI SHAH,  
Advocate

--- For Appellant.

MUHAMMAD RASHID,  
Deputy District Attorney

--- For respondents.

MIAN MUHAMMAD  
SALAH-UD-DIN

--- MEMBER(Executive)  
--- MEMBER(Judicial)

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- Writ petition No 1678-P/2021

instituted before the Peshawar High Court, Peshawar against the impugned order dated 26.01.2021 and converted into service appeal by the Peshawar High Court, Peshawar is for adjudication before us.

02. Brief facts of the case leading to the present service appeal are that the appellant being a Doctor (BS-20) from management cadre was posted as Director Integrated Health Program Khyber Pakhtunkhwa vide notification dated 17.01.2020. Subsequently, vide notification dated 26.01.2021 he was transferred from the said

**ATTESTED**


**MEMBER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

post and was directed to report to Director General Health Services, while additional charge of the project post was assigned to private respondent No.5. The said notification has been impugned and challenged in the instant service appeal.

03. We have heard the arguments of learned counsel for the parties and perused the available record minutely and in details.

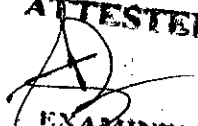
04. Learned counsel for the appellant vehemently contended that the impugned notification dated 26.01.2021 has been issued by the authority not competent in such cases. He referred to and relied on serial-3 of Schedule-III of the Khyber Pakhtunkhwa Government Rules of Business 1985. He contended that the Chief Minister is the competent authority to have transferred the appellant whereas in the instant case the impugned notification has been issued by the Secretary Health, rendering it as illegal, arbitrary, unlawful and without jurisdiction. It was further argued that the appellant was not allowed to complete his normal tenure of two years and was arbitrarily transferred after serving as Director Integrated Health Program for only one year. He assailed the authorization of additional charge of the said project post to private respondent No.5, who was already holding an additional charge (look after) of Director General Health since 15.06.2020. He next contended that if the said project was closed on 30.06.2020 under the decision of steering committee dated 24.02.2020 and new project approved by PDWP on 22.12.2020, then how was it possible to assign additional charge of the same to private respondent No.5, vide impugned notification dated 26.01.2021? He agitated that the impugned notification dated 26.01.2021 has been issued by an incompetent authority and is therefore *coram-non-judice*. The fundamental rights of appellant

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

guaranteed by the Constitution under Article-4,9,18 and 25 have been violated by the respondents. He, therefore, requested that the impugned order being illegal, unlawful, tainted with malafide and issued without any jurisdiction is liable to be set aside.

05. The learned Deputy District Attorney started his arguments with the point that the impugned order has been issued by respondent No.2 after having obtained concurrence of the competent authority. It is, therefore, valid, legal and no malafide is reflected on part of the respondent-department. He further added that the project namely Integrated Health Program Khyber Pakhtunkhwa was closed by the Competent forum (PDWP-Provincial Development Working Party) in its meeting dated 22.12.2020 and as such it was deleted from ADP 2021-22. In the light of decision of PDWP, new project namely Integration of Health Services Delivery with Special Focus on MNCH, LHW and Nutrition Program was approved by the competent forum. The new project was to be assigned for execution to another officer to be appointed by the provincial project Selection Committee, therefore, additional charge was assigned for the time being to private respondent no.5 in the said impugned notification. It was further contended that the appellant being on deputation to the project post was directed to report to DG Health and the competent authority therefore, terminated his deputation. In support of his arguments he relied on 2018 PLC (CS) Peshawar 1248 and 2021 SCMR 867. On the question of tenure, he referred to Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 under which the Competent Authority can transfer a civil servant at any time to any other post provided that his terms and conditions of service are not affected. In support of his arguments, he relied on 2020 PLC (CS) 1307 Supreme Court and 2004 PLC (CS) 705 Supreme Court.

**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar