

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4281/2020

Date of Institution ... 24.04.2020

Date of Decision ... 02.02.2022

Mst: Mehnaz Begum, FJCT Cardiology (BPS-12), Category C Hospital Shabqadar,
District Charsadda. ... (Appellant)

VERSUS

The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar and two
others. ... (Respondents)

Mir Zaman Safi,
Advocate

... For Appellant

Kabirullah Khattak,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQ-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that upon recommendations of Departmental Selection Committee, the appellant was appointed as Junior Clinical Technician (JCT) BPS-12 vide order dated 04-07-2016. Her appointment order was withdrawn vide order dated 31-08-2016 on the issue of her diploma, against which the appellant filed departmental appeal followed by service appeal No. 1104/2016, which was decided vide judgment dated 24-10-2019 and the appellant was re-instated in service with direction to the respondents to issue fresh show cause by providing her appropriate opportunity of defense. In pursuance of the judgment, the appellant was issued show cause notice and was again removed from service vide order dated 01-01-2020, against which the

appellant filed departmental appeal, which was not responded, hence the instant service appeal with prayers that the impugned order dated 01-01-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice and material on record, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such, the respondents violated Article-4 and 25 of the Constitution; that while issuing the impugned order, no chance of personal hearing was afforded to the appellant; that the appellant had not committed any irregularity or illegality at the time of her appointment, therefore the appellant cannot be punished for fault of others; that the appellant has been proceeded under wrong law, hence the impugned order is void ab initio.

03. Learned Additional Advocate General for the respondents has contended that the appellant was appointed after recommendation of departmental selection committee, but later on it was found that certificate of the appellant from medical faculty was for one year under crash program in cardiology technology; that on receipt of guidance from DG Health, the appointment order of the appellant was withdrawn; that as per direction of the service tribunal, the appellant was re-instated in service on 22-11-2019 and show cause notice was served upon her on 26-11-2019, but her reply was found not satisfactory, hence she was removed from service vide order dated 01-01-2020 after observing all codal formalities.


04. We have heard learned counsel for the parties and have perused the record.


05. Record reveals that upon recommendation of Departmental Selection Committee in its meeting held on 23-06-2016, the appellant was appointed as JCT Cardiology BPS-12 vide order dated 04-07-2016. The appellant assumed the charge after fulfilling the formalities of medical fitness. On 31-08-2016 her appointment order was withdrawn due to the reason that her appointment on one year certificate is not covered under the rule, but the appellant was not afforded opportunity to defend her cause, hence this tribunal vide judgment dated 24-10-2019 set aside the proceedings and directed the respondents to proceed afresh. We have observed that the respondents advertised such posts under the old rules, where the requisite qualification for the post were secondary school certificate with science alongwith certificate in the relevant field of cardiology and the appellant was equipped with the prescribed qualification, hence was shortlisted and subsequently appointed, but in the meanwhile, during the process of selection and until materialization of her appointment, the respondents introduced new rules vide notification dated 10-05-2016, where qualification for the said post were declared as secondary school certificate with diploma in the relevant field. Respondent No 3 as a precautionary measure, asked for the opinion of respondent No. 2, who in response has referred to the new rules and respondent No. 3 without digging out the factual position, had withdrawn her appointment order, which however was not warranted and which caused damage to her for no fault of her. The appellant was appointed after due process of law and it was the statutory duty of the appointing authority to scrutinize each and every aspect of the case before issuing an order of appointment and once an order is issued and the civil servant assume charge of such post, it will create vested rights for the civil servant concerned. Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 have held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in

violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioners were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice, order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 587 and 2005 TD (services) 78. The Supreme Court of Pakistan in its another judgment reported as 2015 PLC (CS) 1519 have held that appellant had not procured her appointment letter through dubious means and she could not be attributed any wrong on her part nor the respondents could be allowed to take benefit of its own oversight, lapse or ignorance of law.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 01-01-2020 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER
02.02.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Dr. Ai Shah Litigation Officer for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 01-01-2020 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

01.11.2021

Appellant present through counsel.

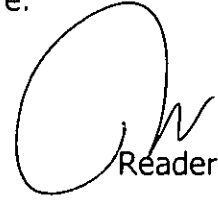
Kabir Ullah Khattak learned Additional Advocate General alongwith Dr. Ali Shah Litigation Officer for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 09.02.2022 before D.B.


Chairman

28.12.2020

Due to summer vacation, case is adjourned to 30.03.2021 for the same as before.



Reader


30.03.2021

Appellant present through counsel.

Muhammad Rasheed learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 13/07/2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

13.07.2021

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

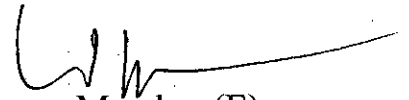
Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 01.11.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

31.08.2020

Learned counsel for the appellant and Mr. Kabirullah Khattak Addl. AG alongwith M/S Anwarullah Assistant and Doctor Ali Shah Litigation Focal Person for the respondents present and submitted written reply/comments which is placed on file. Case to come up for rejoinder if any, and arguments on 16.10.2020 before D.B.



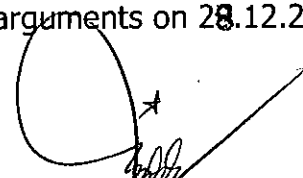
Member (E)

16.10.2020


Junior counsel for appellant present.

Kabirullah Khattak learned AAG alongwith Dr. Ali Shah Litigation Officer for respondents present.

Former made a request for adjournment as senior counsel is busy before Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 28.12.2020 before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

03.06.2020

Counsel for the appellant present.

Contends that the appellant was initially appointed after going through the entire selection process and upon recommendations by the concerned selection committee. She was, however, removed from service on the ground that her educational/training certificates did not meet the requirement prescribed in the advertisement. Further contends that no proper enquiry/probe was held against the appellant before passing of impugned order. In that manner, she was deprived of her valuable service rights by way of putting forth her defence.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 24.07.2020 before S.B.

Chairman



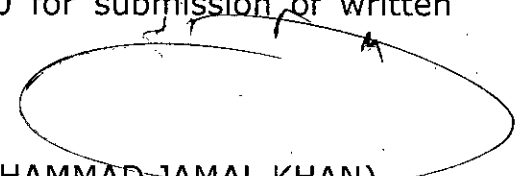
12/6/20
App. B deposited
Security & Process Fee

24.07.2020

Mr. Noor Muhammad Khattak, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representatives of the department Dr. Ali Shah, Litigation Officer and Mr. Hazrat Shah, Superintendent are also present.

Representatives of the department request for further time to submit the requisite reply/comments. May do so on next date of hearing. Adjourned to 31.08.2020 for submission of written reply/comments before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER



Form- A

FORM OF ORDER SHEET

Court of _____
Case No.- 4281 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/05/2020	<p>The appeal of Mst. Mehnaz Begum resubmitted today by Mr. Noor Muhammad Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/5/2020.</p> <p>This case is entrusted to S.Bench for preliminary hearing to be put up on <u>03.06.2020</u></p> <p style="text-align: right;"> MEMBER</p>
2-		

P-16

The appeal of Mst. Mehnaz Begum received today i.e. 24.04.2020 by Mr. Noor Muhammad Khattak, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

- 1- Annexures of the appeal are not flagged which may be flagged.
- 2- Annexures of the appeal are not attested which may be attested.
- 3- Copy of office order dated 01.01.2020 is illegible which may be replaced with legible/better one.
- 4- Copy of judgment mentioned in para-7 of the facts is not placed with appeal which may be placed.
- 5- Five more copies of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1040 /S.T,

Dt. 24-04 /2020



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv, Peshawar.

Note:

Sir,

All objections have been removed,
hence re-submitted today dated 11/5/2020.


11/5/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 4281 /2020

MEHNAZ BEGUM

VS

HEALTH DEPTT:

INDEX

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7	Rejection	F	9.
8	Judgment	G	10- 12.
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11	Impugned order	J	16.
12	Departmental appeal	K	17-18.
13	Vakalat nama	19.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL NO. 4281 /2020 Diary No. 2658

Mst: Mehnaz Begum, FJCT Cardiology (BPS-12),
Category C Hospital Shabqadar, District Charsadda **APPELLANT**

Dated 24/04/2020

VERSUS

- 1- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, District Charsadda.

..... **RESPONDENTS**

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 01/01/2020 ISSUED BY THE RESPONDENT NO.3 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER: That on acceptance of this appeal the impugned order dated 1.1.2020 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the permanent resident and domicile holder of District Charsadda. That an advertisement was published in the daily newspaper by the respondent No.3 for filling up of various posts falling vacant posts in Tehsil Shabqadar District Charsadda. That appellant having requisite qualifications applied for the post of Female Junior Clinical Technician (Cardiology) (BPS-12).
- 2- That after successfully gone through the codal formalities the appellant was appointed as Female Junior Clinical Technician (Cardiology) (BPS-12) on the proper recommendation of the Departmental Selection Committee vide order dated 04-07-2016. Copy of the appointment order is attached as annexure **A.**
- 3- That the appellant was medical examined by the concerned Medical Officer of District Headquarter Hospital Charsadda and accordingly the appellant submitted her arrival report and took over the charge of the post of Female Junior Clinical Technician (Cardiology) (BPS-12) at Category-C Hospital Shabqadar. Copies of the medical certificate and arrival report are attached as annexure **B and C.**

Filed to-day

Registrar
24/4/2020

Re-submitted to-day
and filed.

Registrar
11/5/2020

- 4- That where after the appellant started her duty as FJCT Cardiology (BPS-12) at category C Hospital Shabqadar quite efficiently whole heartedly and up to the entire satisfaction of her high ups and have never given any one the chance of any complaint.
- 5- That the appellant while performing her duty as FJCT Cardiology (BPS-12), astonishingly, the respondent No.3 issued the Order dated 31/08/2016 whereby the appointment order dated 04/07/2016 of the appellant has been withdrawn without giving any plausible reason. Copy of the withdrawal order is attached as annexure **D.**
- 6- That feeling aggrieved the appellant filed Departmental Appeal against the order dated 31/08/2016 but the same was rejected by the respondent No.2 vide appellate order dated 13.10.2016. Copies of the Departmental appeal and rejection order are attached as annexure **E and F.**
- 7- That where after the appellant filed Service Appeal before this august Tribunal and this august Service Tribunal accepted the service appeal of the appellant by set aside the impugned order dated 31/08/2016 vide judgment dated 24/10/2019 and directed the authority to conduct proper inquiry in the matter. Copy of the judgment is attached as annexure **G.**
- 8- That then after the respondent No.3 on the basis of single show cause notice and without conducting regular inquiry into the matter straight away issued the impugned order dated 01/01/2020 where by major penalty of Removal from Service has been imposed upon the appellant with the remarks that the appointment of the appellant is made on One Year Certificate from Medical Faculty Peshawar and the requirement for the post of Female Junior Clinical Technician (Cardiology) (BPS-12) is Diploma from Medical Faculty Peshawar. Copies of the show cause notice, reply and impugned order are attached as annexure **H, I and J.**
- 9- That appellant again feeling aggrieved filed Departmental appeal against the order dated 1.1.2020 but no reply has been received so far. Copy of the Departmental appeal is attached as annexure **K.**
- 10- That having no other remedy the appellant preferred the instant appeal on the following grounds amongst the others.

GROUND:

- A-** That the impugned Order dated 1.1.2020 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents have violated

Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C-** That the impugned Order dated 1.1.2020 has not been issued by the respondents in accordance with law and Rules.
- D-** That no chance of personal hearing/defense has been given to the appellant while issuing the impugned Order dated 1.1.2020 by the respondent No.3.
- E-** That the appellant had not committed any illegality nor irregularity at the time of her appointment, therefore, the appellant cannot be punished on the fault of others.
- F-** That the appellant has been proceeded under the wrong law i.e. E&D Rules, 2011, therefore under the eye of law the impugned order dated 1.1.2020 is void ab initio.
- G-** That, the appellant has been discriminated in the matter while issuing the impugned Order dated 1.1.2020.
- H-** That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 22.4.2020

APPELLANT



MEHNAZ BEGUM

THROUGH:



NOOR MOHAMMAD KHATTAK

& 
MIR ZAMAN SAFI
ADVOCATES



**OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA**

A - (4)

OFFICE ORDER

Consequent upon the recommendation of the Selection Committee in its meeting held on 23-06-2016 under the chairmanship of the undersigned, Mst. Mehnaz begum d/o Ahmed Shah resident of Turangzai, Teh & Distt Charsadda is hereby appointed as JCT Cardiology BPS-12 (9055-650-28555) plus usual allowances as admissible to her under the rules at Category "C" Hospital Shabqadar against the vacant post on the following terms and conditions.

1. She will remain on probation for a period of one year.
2. Her services can be dispensed with/without any notice during the probation period, if her work and conduct found unsatisfactory.
3. Her services will be considered regular and will be entitled to all benefits as admissible under the rules to Government servants.
4. Her appointment will be subject to medical fitness certificate from the Medical Superintendent DHQ Hospital Charsadda.
5. She will be governed by such rules and orders as may be issued by the Govt of Khyber Pakhtunkhwa from time to time for the category of Govt servant to which she belongs.
6. She will not be entitled to claim any TA/DA for medical examination and joining the first appointment.
7. Her documents will be verified from the concerned board/university/medical faculty, if the documents found bogus/fake after the verification, her order of appointment will be automatically cancelled besides taking other legal action against her under the rules and by making recovery of pay and allowances.
8. If she wishes to resign from services, she will have to submit resignation in writing one month in advance or forfeit one month's pay in lieu thereof and will continue to serve till the acceptance of her resignation by the competent authority.

If she accepts the above terms & conditions, she should report to I/C Category "C" Hospital Shabqadar within 14 days after the receipt of this order failing which the order will be considered cancelled/withdrawn.

(Handwritten initials)

(Signature)
DISTRICT HEALTH OFFICER
CHARSADDA

No. 3485-92 / DHO.

Dated Charsadda, the 04 / 07 / 2016

Copy forwarded to the:-

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Charsadda.
3. Zilla Nazim District Govt Charsadda.
4. PS to Secretary Health Govt of Khyber Pakhtunkhwa Peshawar.
5. District Accounts Officer, Charsadda.
6. I/C Category "C" Hospital Shabqadar.
7. Accounts Section of this office.
8. Mst. Mehnaz begum d/o Ahmed Shah resident of Turangzai, Teh & Distt Charsadda for immediate compliance.

ATTACHED

(Handwritten notes)
4/7/16
17101-3754974-8

(Signature)
DISTRICT HEALTH OFFICER
CHARSADDA

100



7

MEDICAL CERTIFICATE

B. 5

Name of Official Miss - Mehrnaz - Begum

Caste or race Alghan

Father's Name D/O Ahmad Shah

Residence Tarag Lai

District Charsadda

Date of birth 15/03/1988

Exact height by measurement _____

Personal mark of identification 17101-3754974-8

Signature of the Official M

Signature of head of office _____

Seal of Office _____

I do hereby certify that I have examined Miss - Mehrnaz - Begum
a candidate for employment in the office of the Health
and cannot discover that he had any disease communicable or other constitutional
affection or bodily infirmity except nil

I do not consider this as disqualification for employment in the office of the
_____ His age according to his own statement is 28 years
years and by appearance about twenty eight years.

LEFT HAND THUMB AND FINGER
IMPRESSIONS _____

Mehnaz
Medical Superintendent
DHO Hospital Charsadda
D.H.O Hospital
Charsadda

ATTESTED

M

ATTESTED

M

Dr. C. Hosp. Sharada
JCI Cardiology
Rajmool Shah
Mehraj Basm 2/0

For Release
M

Times

(P/N)

dated 04-07-2016, I beg to submit
my arrival report for study at
JCI (Cardiology) (Times) at Category-C
Hospital, Sharada today is 04/07/16

DHO, Komsarka bearing no. 3485-92/DHO,

In compliance to the order of

SM,

Sharada Arrive Report

①
②
③

②

Exchange Category C Hospital
Sharada

8

①
②
③

OFFICE OF THE DISTRICT HEALTH OFFICER, CHARSADDA.

OFFICE ORDER.

The Director General Health Services Khyber Pakhtunkhwa Peshawar with reference to his letter No. 6109/E.V dated 26/3/2016 guided the undersigned that appointment of FJCT or one year certificate is not covered under the rules.

In compliance to the above guidance appointment order bearing No.3485/92/DHO dated 04/07/2016 in respect of Mst. Mehnaz Begum d/o Ahmed Shah resident of Turangzai, District Charsadda FJCT Cardiology BPS-12 at Category-C Hospital Shabqadar is hereby cancelled/withdrawn from the date of issue i.e 04/07/2016.


District Health Officer,
Charsadda,

No. 5056-67/DHO/CHD

Dated the 31/08/2016

Copy forwarded to the:

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar w/r to above for information please.
 2. PS to Secretary Health Government of Khyber Pakhtunkhwa Peshawar for information please.
 3. District Nazim Charsadda for information please.
 4. District Accounts Officer, Charsadda.
 5. Incharge Category C Hospital Shabqadar for information and n/action.
 6. Account Section of this office.
- Mst. Mehnaz Begum d/o Ahmed Shah resident of Turangzai, District Charsadda FJCT Cardiology BPS-12 at Category-C Hospital Shabqadar


District Health Officer,
Charsadda.

ATTESTED



To
The Director General Health Services,
Khyber Pakhtunkhwa Peshawar.

Subject: APPEAL FOR REINSTATEMENT IN SERVICE

Respected Sir,

The following facts are submitted for your kind perusal and sympathetic consideration:-

1. That on the recommendation of Departmental Selection Committee at category C Hospital Shabqadar District Charsadda and after being declared fit by the Medical Superintendent DHQ Hospital Charsadda, on 9-07-2016 the applicant was appointed as FJCT Cardiology (BPS-12) by the District Health Officer Charsadda (Annex-"A" & "B")
2. That in compliance with the order of the competent authority I submitted arrival report and performed duty to the entire satisfaction of the superior from 09/07/2016 to 31/08/2016 as FJCT Cardiology BPS- 12 at Category C hospital Shabqadar but till now I have not been paid even a penny for the above mentioned period.
3. That it is very unfortunate that without having any complaint or fault of my own, my appointment order bearing No. 3485-92/DHO/CHD dated 04/07/2016 has been cancelled/withdrawn by the DHO Charsadda vide No. 5056-62/DHO/CHD dated 31/08/2016 from the date of Issue 04/07/2016 without giving me any notice which is steep violation of rules and norms of justice (Cancellation order is at Annex-C.
4. That the plea behind cancellation of order put forward by the DHO was that the prescribed course for the post was two years diploma while the applicant is in possession of one year diploma. Had this point was kept in mind before issuance of my appoint order, I would have not suffered at this stage.
5. That it is too injustice that my other fellows having one year diploma are still performing their duties. It is due to this sudden calamity I being a patient of depression.
6. That my husband has been died leaving behind 03 kids/infants and it is too difficult for such an unemployed women folk to feed and clothe and provide other essentials.
7. That my other fellows are sunning their duties on the said Diploma/Certificate, why my appointment order have been cancelled and made me a depression patient.

Keeping in view the above facts and circumstances, it is very humbly prayed that I may kindly be reinstated in service with retrospective effect. The dues outstanding to the Health Department may also please be paid.

Yours Faithfully,

Mehnaz Begum D/O Ahmed Shah
FJCT (Cardiology)
Category C Hospital, Shabqadar,
District Charsadda.

R/O: Turangzai Mohallah Maroof Khel, Tehsil &
District Charsadda.

ATTESTED

Office Copy

M

26/5/16
27/5/16
E - 8

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR.



Office Ph# 091 - 9210269 Exchange# 091 - 9210187, 091 - 9210196.

Fax #091 - 9210230

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.

No. 2350 /E-V

Dated 13/10/2016


To

Mst. Mehnaz Begum d/o Ahmad Shah Resident of Turangzai
Mohallah Maroof Khel, Tehsil & District Charsadda.

Subject: - Appeal for Re-instatement in Service.

Memo:

I am directed to refer to your application, dated 22.09.2016 on the subject noted above and to state that appointment on one year certificate is not cover under the rules.


ASSISTANT DIRECTOR (P-II)
DGHS KHYBER PAKHTUNKHWA,
PESHAWAR.

13/10/16

ATTESTED


9-10



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1104/2016

Date of institution ... 26.10.2016

Date of judgment ... 24.10.2019

Mehnaz Begum Daughter of Ahmad Shah
F.J.C.T Cardiology BPS-12 at Category-C Hospital
Shabqader Tehsil Shabqader District Charsadda.
Resident of Mohallah Maroof Khel Turangzai Tehsil and District Charsadda
... (Appellant)

VERSUS

1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
 2. Assistant Director (P-III) DGHS Khyber Pakhtunkhwa Peshawar.
 3. District Health Officer Charsadda.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER NO. 5056-62/DHO/Chd: DATED
31.08.2016 PASSED BY RESPONDENT NO. 3 WHEREBY
APPOINTMENT ORDER BEARING NO. 3485-92/DHO DATED
04.07.2016 WAS CANCELLED/WITHDRAWN FROM THE
DATE OF ISSUE I.E 04.07.2016 AND AGAINST ORDER NO.
7350/E-V DATED 13.10.2016 PASSED RESPONDENT NO. 1
THROUGH RESPONDENT NO. 2.

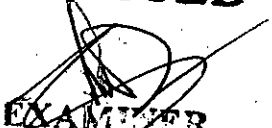
Mr. Noor Muhammad Khattak, Advocate. .. For appellant.
Mr. Kabirullah Khattak, Additional Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. HUSSAIN SHAH .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- Counsel for the
appellant and Mr. Kabirullah Khattak, Additional Advocate General for the
respondents present. Arguments heard and record perused.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(11)

authority on the recommendation of Selection Committee vide order dated 04.07.2016. The appellant assumed the charge after obtaining medical fitness certificate on the same day and was performing her duty regularly. The competent authority cancelled/withdrawn her appointment order vide order dated 31.08.2016 on the allegation that for the appointment of Female Junior Clinical Technician, one year certificate is not covered under the rules. The appellant filed departmental appeal on 22.09.2016 which was rejected on 13.10.2016 hence, the present service appeal on 26.10.2016.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended ~~that the appellant~~ that a post of Female Junior Clinical Technician (Cardiology) was advertised by the respondent-department in the newspaper. It was further contended that the appellant applied for the same and on the recommendation of Selection Committee, the competent authority appointed her as Junior Clinical Technician (Cardiology) vide order dated 04.07.2016. It was further contended that the appellant after medical fitness certificate, assumed the charge and was performing her duty regularly therefore, the respondent department was required to issue show-cause notice and provide opportunity of personal hearing before passing the impugned order but the appointment order of the appellant was withdrawn without issuing any show-cause notice and providing opportunity of personal hearing therefore, the respondent-department has violated the requirement of natural justice. It was further contended that the respondent-department have advertised the post of Junior Clinical Technician under the old rules and as per said rules qualification for Junior Clinical

ATTESTED

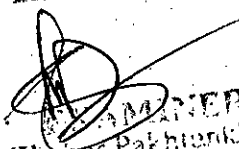
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

M. Anwar
24.10.2019

Facility/recognized institute in the relevant filed and the appellant was also having the said qualification and after scrutiny of the relevant record, the competent authority appointed the appellant on the recommendation of Selection Committee therefore, the respondent-department was not competent to withdraw appointment order of the appellant therefore, it was vehemently contended that the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the respondent-department had notified new service rules dated 10th May 2016 whereby a Secondary School Certificate at least 2nd Division in Science from the recognized board and diploma in the relevant Paramedical Technology from the Khyber Pakhtunkhwa recognized institution for appointment of ~~Senior~~ Clinical Technician (Cardiology) was necessary. It was further contended that the respondent-department has also issued advertisement for the posts of Clinical Technician (Cardiology) PHT (Multiple Purpose) on 21.05.2016 and on the basis of said advertisement, the appellant also applied for the post of Clinical Technician (Cardiology) (BPS-12). It was further contended that since the appellant was not having requisite qualification of diploma in the relevant Paramedical Technology from the Khyber Pakhtunkhwa Medial Faculty rather she was having only one year certificate therefore, the appellant was not qualified for the post of Clinical Technician (BPS-12) therefore, the respondent-department has rightly withdrawn the appointment order of the appellant being not qualified for the said post and prayed for dismissal of appeal.

ATTESTED


 J. AMIN
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

M. Amin
 24.10.2019

12/A

the recommendation of Selection Committee vide order dated 04.07.2016. The record further reveals that the appellant after obtaining Medical Fitness Certificate, assumed the charge and was regularly performing her duty therefore, in such circumstances when the respondent-department was going to withdrawn her appointment order, the respondent-department was bound to issue show-cause notice that why her appointment order be not withdrawn/cancelled on such and such ground and after giving reply by the appellant and providing opportunity of personal hearing, the respondent-department should have passed the proper order but neither the respondent-department has issued any show-cause notice to the appellant that why her appointment order be not cancelled/withdrawn on such and such ground nor has provided her opportunity of replying show-cause notice and opportunity of personal hearing. Meaning thereby, that the respondent-department has violated the requirements of natural justice which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to respondent-department to issue show-cause notice to the appellant that why her appointment order be not cancelled/withdrawn on such and such ground and after replying to the said show-cause notice and providing opportunity of personal hearing, the respondent-department pass order deem appropriate within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will also be subject to the outcome/decision of show-cause notice. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.10.2019

Muhammad Amin

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
Certified to be true copy

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA

SHOW CAUSE NOTICE

H - 13
10

1. I Dr. Akhunzada Zafar Ali District Health Officer Charsadda as competent authority hereby charge you Mrs. Mehnaz Begum D/o Ahmad Shah, FJCT Cardiology (BS-12) Category C Hospital Shabqadar, R/o Turangzai, Tehsil & District Charsadda as follows
 - That you Mrs. Mehnaz Begum were appointed as FJCT Cardiology (BS-12) at Category C Hospital Shabqadar on extraneous grounds as the requirement for the above post was Secondary School Certificate at least 2nd division in Science from recognized board and Diploma in the relevant Paramedical Technology from Khyber Pakhtunkhwa medical faculty or diploma in the relevant paramedical technology from any other recognized institution provided the same is registered by the medical faculty Khyber Pakhtunkhwa Peshawar,
 - Where as you had one year certificate in cardiology under crash program and as such you were not eligible for the said post.
2. By reasons of the above your appointment appear to have been conducted on extraneous grounds (rule (3) of the Khyber Pakhtunkhwa Govt servants (E&D rules 2011) and have rendered yourself to removal from service (rule 4(b iii) of the Khyber Pakhtunkhwa E&D rule 2011).
3. You are therefore required to submit your written defense within 7 days of the receipt of this charge sheet to the undersigned.
4. Your written defense if any should reach the undersigned within the specified period failing which it should be presume that you have no defense to put in and in that case Ex party action shall be taken against you.
5. Intimate as to whether you desire to be heard in person.

SH
District Health Officer
Charsadda

No. 8631-35 / DHO.

Dated Charsadda the 26/11 /2019

Copy to:

1. Registrar Khyber Pakhtunkhwa, Services Tribunal
2. Secretary Health Govt of Khyber Pakhtunkhwa, Peshawar
3. Director General Health Services Khyber Pakhtunkhwa, Peshawar
4. Assistant Director (P-III), DGHS Khyber Pakhtunkhwa, Peshawar
5. Mrs. Mehnaz Begum D/o Ahmad Shah, FJCT Cardiology, Category C Hospital Shabqadar, R/o Mahallah Maroof Khel Turangzai Tehsil & District Charsadda

[Signature]
District Health Officer
Charsadda

ATTESTED

[Signature]

D.No = 3074
3/12/01P

The District Health Officer,
District Chasadda.

SUBJECT: REPLY TO THE SHOW CAUSE NOTICE DATED 26.11.2019

I - (14)

R.SIR,

Most humbly it is stated that your good self has served a show cause notice dated 26.11.2019 on me regarding the allegation **"that I have been appointed as Female Junior Clinical Technician (Cardiology) (BPS-12) at category.c Hospital Shabqadar on extraneous grounds as the requirement for the above post was secondary school certificate, at least 2nd Division in science from recognized board and Diploma in the relevant Paramedical technology from Khyber Pakhtunkhwa, Medical faculty or diploma in the relevant paramedical technology from any other recognized institution provided the same is registered by the medical faculty of Khyber Pakhtunkhwa, Peshawar, Whereas you had one year certificate in cardiology under crash program and as such you were not eligible for the said post"**.

Respected sir under the old rules the requisite qualification for the post of FJCT BPS-9 now BPS-12 was Secondary School Certificate in science along with certificate in the relevant field of cardiology and under the said old rules your good self had advertised the said post and as such I applied. After proper selection process I was recommended by the Departmental selection committee for appointment against the post of FJCT (BPS-12) vide order dated 4.7.2016. That in light of the said appointment order I submitted my arrival report and started my duty quite efficiently and up to the entire satisfaction of my superiors.

Unfortunately vide order dated 31.8.2016 my appointment order was withdrawn with retrospective effect on the reason that the certificate in cardiology for the post of FJCT cardiology is not covered under the new rules. Feeling aggrieved I knocked the door of the august Service Tribunal in appeal No.1104/2016 and vide judgment dated 24.10.2019 my above mentioned appeal was allowed by the august Service Tribunal.

Respected Sir I haven't committed any misconduct rather I have been appointed through proper and fair selection process and most importantly I have been recommended by the Departmental selection committee, therefore under the

ATTESTED

M

principle of natural justice I have the right to retain my service as FJCT (BPS-12). Moreover many JCT (BPS-12) who have the qualification of certificate in cardiology have been appointed against the said posts and still they are in service and performing their duties efficiently but in my case I have been made scapegoat.

15

Sir it is the well established principle of law that "**One should not be punished on the fault of others**". Sir I have not committed any misconduct rather it is the fault of the competent authority who appointed me under the old rules. Sir I have more than five years experience in the relevant field and can deliver much better than the one who have diploma in the field of cardiology.

It is therefore most humbly requested that on acceptance of this reply to the show cause notice dated 26.11.2019 the allegation leveled against me may kindly be set aside and I may be allowed to perform my duty as FJCT (BPS-12).

Dated: 2.12.2019

Obediently Your's,



MEHNAZ BEGUM, FJCT (BPS-12),
Category C Hospital, Shabqadar.

ATTESTED



OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA

OFFICE ORDER:

Whereas in compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar after her re-instatement on dated 22.11.2019, show cause notice was issued to Mrs. Mehnaz Begum Daughter of Ahmad Shah FJCT cardiology BPS-12 category C Hospital Shabqadar Charsadda on dated 20.11.2019, which was replied on 02.12.2019 and an opportunity of personal hearing provided to her by the undersigned on 12.02.2019. 2020

AND WHEREAS her appointment made on one year certificate from Medical Faculty Peshawar and whereas the requirement for the said post was Two year Diploma in the related field from the above mentioned Faculty or any other recognized Institution provided the same registered by the Medical Faculty Khyber Pakhtunkhwa Peshawar according to advertisement.

ANDWHEREAS her appointment was not made under the rules.

NOW THEREFORE, the undersigned being competent authority, after having examined charges, evidence on record and explanation of the accused Mrs. Mehnaz Begum, FJCT Cardiology (BS-12) is pleased to impose the penalty of REMOVAL FROM SERVICE on Mrs. Mehnaz Begum FJCT cardiology (BPS-12) Category C Hospital Shabqadar Charsadda.

DISTRICT HEADQUARTER HOSPITAL
CHARSADDA

Dated: 01.01.2020

NO.40-46/DHO Charsadda

To

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

← (P)

Subject: DEPARTMENTAL APPEAL AGAINST THE REMOVAL ORDER DATED 01/01/2020 ISSUED BY DISTRICT HEALTH OFFICER

R/Sir,

Most respectfully, it is stated that I am a permanent resident & domicile holder of District Charsadda. An advertisement was published in the daily newspaper for filling up of various posts falling vacant posts in Tehsil Shabqadar District Charsadda. I applied for the post of Female Junior Clinical Technician (Cardiology) (BPS-12) as I equipped with the requisite qualifications.

After successfully fulfilling all the requirements and has successfully gone through the codal formalities, I was appointed as Female Junior Clinical Technician (Cardiology) (BPS-12) on the proper recommendation of the Departmental Selection Committee vide order dated 04-07-2016. I was medical examined by the concerned Medical Officer of District Headquarter Hospital Charsadda and accordingly I submitted my arrival report and took over the charge of the post of Female Junior Clinical Technician (Cardiology) (BPS-12) at Category-C Hospital Shabqadar. I have performed my duty quite efficiently whole heartedly and upto the entire satisfaction of my high ups and have never given any one the chance of any complaint.

While performing my duties, astonishingly, the authority issued the impugned Order dated 31/08/2016 whereby my appointment order dated 04/07/2016 was withdrawn by the competent authority without giving any plausible reason.

I, approached the competent authority by filing Departmental Appeal against the order dated 31/08/2016 which was rejected hence I, filed Service Appeal before the Service Tribunal Peshawar, the Honourable Service Tribunal accepted my service appeal by reinstating me and setting aside the impugned order dated 31/08/2016 vide judgment dated 24/10/2019 and directed the authority to conduct proper inquiry in the matter.

ATTESTED

(Signature)

The competent authority without conducting regular inquiry into the matter straight away issued the impugned order dated 01/01/2020 where by major penalty of Removal from Service has been imposed upon me with the remarks that My appointment is made on One Year Certificate from Medical Faculty Peshawar and the requirement for the post of Female Junior Clinical Technician (Cardiology) (BPS-12) is Diploma from Medical Faculty Peshawar and without properly investigating the matter or conducting regular enquiry which mandatory in major penalty nor other codal formalities was adopted while issuing the impugned order dated 01/01/2020.

Therefore, it is, most kindly requested that the order dated 01/01/2020 whereby major penalty of Removal from Service has been impose upon me may be set aside and I may be reinstated into service with all back benefit.

I shall be very thankful to you for this kindness.

Dated: 13/01/2020

Obediently Yours,



(MEHNAZ BEGUM)

Female Junior Clinical Technician
(Cardiology) (BPS-12),
Category-C Hospital, Charsadda.

ATTESTED



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Mehnaz Begum

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Mehnaz Begum*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Mehnaz Begum

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE SERVICE TRIBUNAL PESHAWAR

APPEAL NO 4281/2020

Mehnaz Begun

APPELLANT/PETITIONER

VERSUS

1. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar
2. The Director General Health Services Department, Khyber Pakhtunkhwa Peshawar
3. The District Health Officer Charsadda (RESPONDENTS)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1,2 &3.

1. That the appellant has got no locus standi to file appeal.
2. That the appellant is estopped to file this appeal by her own conduct.
3. That due to mis-statement and concealment of material fact appeal is liable to be dismissed.
4. That the appeal is bad for mis-joiner and non joined of necessary parties.
5. That the instant appeal is barred by law and time again.
6. That the appellant has got no cause of action to file instant appeal.

ON FACTS:

Para 1 The first part pertains to record, however it is worth mentioning that the appellant did not possess the requisite qualification (Rules are attached Annexure A).

Para 2 The category for which the appellant had applied, there was one post and two applications were received .In the merit list the appellant was at serial No. 2(waiting list), the appointment order was issued to serial no 1 but she did not submit her arrival report for duty and gave written statement that she had been selected at DHQ Hospital Charsadda and requested for withdrawal/cancellation of her appointment order issued by the respondent No 3 (DHO Charsadda).Then appointment order was issued to the appellant at serial No 2 (Mehnaz Begum).The certificate of the appellant from the Medical Faculty Peshawar was for one year under Crash Program in cardiology Technology. On receipt of guidance from the Director General Health Services Khyber Pakhtunkhwa Peshawar, the order of the appellant was withdrawn/cancelled afterwards.

Para 3 Pertains to record. No comments

Para4 No Comments.

Para 5 As explained in Para No2,after getting guidance from Director General Health Services Peshawar her appointment order was withdrawn.

Para 6 As per approved service Rules, Diploma in the relevant field from Medical Faculty with Matric Science in second division are required for appointment of JCT Cardiology while the appellant had only one-year certificate. Therefore her appointment is not covered under the rules and the appeal had not been acceded to.(rules enclosed).

Para 7 Pertains to record

Para 8 Incorrect: As per directions of judgment of this august Tribunal she was reinstated into her service on 22/11/2019 and show cause notice was issued to her on 26/11/2019. Her reply to show cause notice dated 02/12/2019 was received by DHO Office Charsadda on 03/12/2019. Personal Hearing was given on 12/12/2019. She after attending the hearing session, refused to give her written statement. On 01/01/2020 she was removed from service after fulfilling all the codal formalities thus the respondent implemented the judgment of this honorable tribunal. (Annexures attached)

Para 9 No comments.

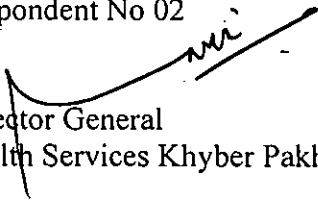
Para 10 No comments.

GROUNDS:

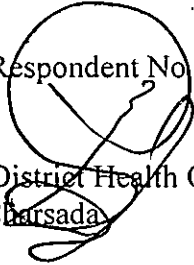
- A This office order dated 01/01/2020 i.e. removal from service was issued after fulfilling all codal formalities as required in the judgment of this august tribunal. Hence the impugned order is in accordance with the law.
- B The appellant has been treated according to law. No violation of law has been done.
- C As stated above the said order was issued according to rules after fulfilling all codal formalities by respondent No 3.
- D Incorrect as per Para No. 8
- E The appellant's removal from service was due to her incomplete /requisite requirements for the said post as she does not possess the requisite qualification.
- F As stated above all requirements Of E & D rules, 2011 were fulfilled and as per directions of honorable service tribunal.
- G No such discrimination has been done.
- H No comments.

It is therefore humbly prayed that on acceptance of this para wise comments the instant appeal of the appellant may kindly be dismissed with cost

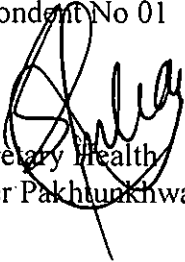
Respondent No 02


Director General
Health Services Khyber Pakhtunkhwa

Respondent No 03


District Health Officer
Charsada

Respondent No 01


Secretary Health
Khyber Pakhtunkhwa

SERVICE APPEAL NO. 1104/2016

Date of institution ... 26.10.2016

Date of judgment ... 24.10.2019



Mehnaz Begum Daughter of Ahmad Shah
 F.J.C.T. Cardiology BPS-12 at Category-C Hospital
 Shabqader Tehsil Shabqader District Charsadda
 Resident of Mohallah Maroof Khel Turangzai Tehsil and District Charsadda ...
 (Appellant)

VERSUS

1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
 2. Assistant Director (P-III) DGHS Khyber Pakhtunkhwa Peshawar.
 3. District Health Officer Charsadda.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO. 5056-62/DHO/Chd: DATED 31.08.2016 PASSED BY RESPONDENT NO. 3 WHEREBY APPOINTMENT ORDER BEARING NO. 3485-92/DHO DATED 04.07.2016 WAS CANCELLED/WITHDRAWN FROM THE DATE OF ISSUE I.E 04.07.2016 AND AGAINST ORDER NO. 7350/E-V DATED 13.10.2016 PASSED RESPONDENT NO. 1 THROUGH RESPONDENT NO. 2.

Mr. Noor Muhammad Khattak, Advocate. .. For appellant.
 Mr. Kabirullah Khattak, Additional Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
 MR. HUSSAIN SHAH. .. MEMBER (EXECUTIVE)

ATTESTEDJUDGMENT

EXAMINER
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the cases are that the appellant was appointed as Female Junior Clinical Technician (Cardiology) in Health Department by the competent

authority on the recommendation of Selection Committee vide order dated 04.07.2016. The appellant assumed the charge after obtaining medical fitness certificate on the same day and was performing her duty regularly. The competent authority cancelled/withdrawn her appointment order vide order dated 31.08.2016 on the allegation that for the appointment of Female Junior Clinical Technician, one year certificate is not covered under the rules. The appellant filed departmental appeal on 22.09.2016 which was rejected on 13.10.2016 hence, the present service appeal on 26.10.2016.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended ~~that the appellant~~ that a post of Female Junior Clinical Technician (Cardiology) was advertised by the respondent-department in the newspaper. It was further contended that the appellant applied for the same and on the recommendation of Selection Committee, the competent authority appointed her as Junior Clinical Technician (Cardiology) vide order dated 04.07.2016. It was further contended that the appellant after medical fitness certificate, assumed the charge and was performing her duty regularly therefore, the respondent department was required to issue show-cause notice and provide opportunity of personal hearing before passing the impugned order but the appointment order of the appellant was withdrawn without issuing any show-cause notice and providing opportunity of personal hearing therefore, the respondent-department has violated the requirement of natural justice. It was further contended that the respondent-department have advertised the post of Junior Clinical Technician under the old rules and as per said rules qualification for Junior Clinical Technician (Cardiology) was Secondary School Certificate with Science from the recognized board and certificate from the NWFP Medical

M. Ammar
24.10.2019

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Facility/recognized institute in the relevant filed and the appellant was also having the said qualification and after scrutiny of the relevant record, the competent authority appointed the appellant on the recommendation of Selection Committee therefore, the respondent-department was not competent to withdraw appointment order of the appellant therefore, it was vehemently contended that the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the respondent-department had notified new service rules dated 10th May 2016 whereby a Secondary School Certificate at least 2nd Division in Science from the recognized board and diploma in the relevant Paramedical Technology from the Khyber Pakhtunkhwa recognized institution for appointment of ~~Senior~~ ^M Clinical Technician (Cardiology) was necessary. It was further contended that the respondent-department has also issued advertisement for the posts of Clinical Technician (Cardiology) PHT (Multiple Purpose) on 21.05.2016 and on the basis of said advertisement, the appellant also applied for the post of Clinical Technician (Cardiology) (BPS-12). It was further contended that since the appellant was not having requisite qualification of diploma in the relevant Paramedical Technology from the Khyber Pakhtunkhwa Medial Faculty rather she was having only one year certificate therefore, the appellant was not qualified for the post of Clinical Technician (BPS-12) therefore, the respondent-department has rightly withdrawn the appointment order of the appellant being not qualified for the said post and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was appointed as Female Junior clinical Technician (Cardiology) BPS-12 by the competent authority on

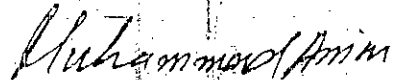
M. Anwar
24.10.2019

ATTESTED

the recommendation of Selection Committee vide order dated 04.07.2016. The record further reveals that the appellant after obtaining Medical Fitness Certificate, assumed the charge and was regularly performing her duty therefore, in such circumstances when the respondent-department was going to withdrawn her appointment order, the respondent-department was bound to issue show-cause notice that why her appointment order be not withdrawn/cancelled on such and such ground and after giving reply by the appellant and providing opportunity of personal hearing, the respondent-department should have passed the proper order but neither the respondent-department has issued any show-cause notice to the appellant that why her appointment order be not cancelled/withdrawn on such and such ground nor has provided her opportunity of replying show-cause notice and opportunity of personal hearing. Meaning thereby, that the respondent-department has violated the requirements of natural justice which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to respondent-department to issue show-cause notice to the appellant that why her appointment order be not cancelled/withdrawn on such and such ground and after replying to the said show-cause notice and providing opportunity of personal hearing, the respondent-department pass order deem appropriate within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will also be subject to the outcome/decision of show-cause notice. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.10.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA

OFFICE ORDER

The competent authority, District Health Officer Charsadda has been pleased to set aside this office order No. 5056-62/DHO Charsadda Dated 31/08/2016, whereby the appointment order of Mrs. Mehnaz Begum D/o Ahmad Shah, R/o Mahallah Maroof Khel Turangzai Tehsil & District Charsadda as FJCT Cardiology (BS-12) against the vacant post at Category C Hospital Shabqadar was withdrawn / cancelled, and to reinstate her into service in compliance with the judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 24/10/2019, Appeal No. 1104/2016 on account of non observance of codal formalities i.e. initiating disciplinary proceedings under (the Khyber Pakhtunkhwa Govt servants efficiency & disciplinary rules 2011).

Consequent upon the above, Mrs. Mehnaz Begum D/o Ahmad Shah, R/o Mahallah Maroof Khel Turangzai, Tehsil & District Charsadda is hereby directed to report to the undersigned enabling her to face the disciplinary proceedings as prescribed under the rules.

sd
District Health Officer
Charsadda

Dated Charsadda the 22/11/2019

No. 8601-02 / DHO.

Copy to:

1. Registrar Khyber Pakhtunkhwa, Services Tribunal
2. Secretary Health Govt of Khyber Pakhtunkhwa, Peshawar
3. Director General Health Services Khyber Pakhtunkhwa, Peshawar
4. Assistant Director (P-III), DGHS Khyber Pakhtunkhwa, Peshawar
5. MS Category C Hospital Shabqadar
6. DAO Charsadda
7. Accounts section DHO office Charsadda
8. Mrs. Mehnaz Begum D/o Ahmad Shah, FJCT Cardiology (BS-12) Category C Hospital Shabqadar R/o Mahallah Maroof Khel Turangzai Tehsil & District Charsadda

For information and compliance.

sd
District Health Officer
Charsadda



OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA

SHOW CAUSE NOTICE

1. I Dr. Akhunzada Zafar Ali District Health Officer Charsadda as competent authority hereby charge you Mrs. Mehnaz Begum D/o Ahmad Shah, FJCT Cardiology (BS-12) Category C Hospital Shabqadar, R/o Turangzai, Tehsil & District Charsadda as follows
 - That you Mrs. Mehnaz Begum were appointed as FJCT Cardiology (BS-12) at Category C Hospital Shabqadar on extraneous grounds as the requirement for the above post was Secondary School Certificate at least 2nd division in Science from recognized board and Diploma in the relevant Paramedical Technology from Khyber Pakhtunkhwa medical faculty or diploma in the relevant paramedical technology from any other recognized institution provided the same is registered by the medical faculty Khyber Pakhtunkhwa Peshawar,
 - Where as you had one year certificate in cardiology under crash program and as such you were not eligible for the said post.
2. By reasons of the above your appointment appear to have been conducted on extraneous grounds (rule (3) of the Khyber Pakhtunkhwa Govt servants (E&D rules 2011) and have rendered yourself to removal from service (rule 4(b-iii) of the Khyber Pakhtunkhwa E&D rule 2011).
3. You are therefore required to submit your written defense within 7 days of the receipt of this charge sheet to the undersigned.
4. Your written defense if any should reach the undersigned within the specified period failing which it should be presumed that you have no defense to put in and in that case Ex party action shall be taken against you.
5. Intimate as to whether you desire to be heard in person.

SM
District Health Officer
Charsadda

No. 8631-35 /DHO.

Dated Charsadda the 26/11 /2019

Copy to:

1. Registrar Khyber Pakhtunkhwa, Services Tribunal
2. Secretary Health Govt of Khyber Pakhtunkhwa, Peshawar
3. Director General Health Services Khyber Pakhtunkhwa, Peshawar
4. Assistant Director (P-III), DGHS Khyber Pakhtunkhwa, Peshawar
5. Mrs. Mehnaz Begum D/o Ahmad Shah, FJCT Cardiology Category C Hospital Shabqadar, R/o Mahallah Maroof Khel Turangzai Tehsil & District Charsadda

[Signature]
District Health Officer
Charsadda
o/c

Kabeer
27-11-19

[Signature]
27/11/19

To

Dairy No. 3074
Date 31/12/19
DHO Chasadda

The District Health Officer,
District Chasadda.

SUBJECT: REPLY TO THE SHOW CAUSE NOTICE DATED 26.11.2019

R.SIR,

Most humbly it is stated that your good self has served a show cause notice dated 26.11.2019 on me regarding the allegation **"that I have been appointed as Female Junior Clinical Technician (Cardiology) (BPS-12) at category c Hospital Shabqadar on extraneous grounds as the requirement for the above post was secondary school certificate at least 2nd Division in science from recognized board and Diploma in the relevant Paramedical technology from Khyber Pakhtunkhwa, Medical faculty or diploma in the relevant paramedical technology from any other recognized institution provided the same is registered by the medical faculty of Khyber Pakhtunkhwa, Peshawar, Whereas you had one year certificate in cardiology under crash program and as such you were not eligible for the said post"**.

Respected sir under the old rules the requisite qualification for the post of FJCT BPS-9 now BPS-12 was Secondary School Certificate in science along with certificate in the relevant field of cardiology and under the said old rules your good self had advertised the said post and as such I applied. After proper selection process I was recommended by the Departmental selection committee for appointment against the post of FJCT (BPS-12) vide order dated 4.7.2016. That in light of the said appointment order I submitted my arrival report and started my duty quite efficiently and up to the entire satisfaction of my superiors.

Unfortunately vide order dated 31.8.2016 my appointment order was withdrawn with retrospective effect on the reason that the certificate in cardiology for the post of FJCT cardiology is not covered under the new rules. Feeling aggrieved I knocked the door of the august Service Tribunal in appeal No.1104/2016 and vide judgment dated 24.10.2019 my above mentioned appeal was allowed by the august Service Tribunal.

Respected Sir I haven't committed any misconduct rather I have been appointed through proper and fair selection process and most importantly I have been recommended by the Departmental selection committee, therefore under the

Sir
Dr. Ali Shah
Cott. J. J. J.
NA
2/12/19

principle of natural justice I have the right to retain my service as FJCT (BPS-12). Moreover many JCT (BPS-12) who have the qualification of certificate in cardiology have been appointed against the said posts and still they are in service and performing their duties efficiently but in my case I have been made scapegoat.

Sir it is the well established principle of law that "**One should not be punished on the fault of others**". Sir I have not committed any misconduct rather it is the fault of the competent authority who appointed me under the old rules. Sir I have more than five years experience in the relevant field and can deliver much better than the one who have diploma in the field of cardiology.

It is therefore most humbly requested that on acceptance of this reply to the show cause notice dated 26.11.2019 the allegation leveled against me may kindly be set aside and I may be allowed to perform my duty as FJCT (BPS-12).

Dated: 2.12.2019

Obediently Your's,



MEHNAZ BEGUM, FJCT (BPS-12),
Category C Hospital, Shabqadar.



OFFICE OF THE
DISTRICT HEALTH OFFICER
CHARSADDA

OFFICE ORDER

Whereas in compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar after being reinstated on dated 22/11/2019, show cause notice was issued to Mrs. Mehnaz Begum daughter of Ahmad Shah FJCT Cardiology BPS 12 Category C Hospital Shabqader Charsadda on dated 26/11/2019 which was replied on 02/12/2019 and an opportunity of personal hearing was provide to her by the under-signed on 12/02/2019. (12-12-2019)

AND WHEREAS her appointment was made on one year certificate from Medical Faculty Peshawar and whereas the requirement for the said post was Two Year Diploma in the relevant field from the above mentioned Faculty or any other recognized institution provided the same is registered by the Medical Faculty Khyber Pakhtunkhwa Peshawar according to advertisement,

ANDWHEREAS her appointment was not made under the rules

NOW THEREFORE the undersigned being competent authority, after having examined the charges evidence on record and explanation of the accused Mrs Mehnaz Begum FJCT Cardiology (BS-12) ,is pleased to impose the penalty of REMOVAL FROM SERVICE upon Mrs. Mehnaz begum FJCT cardiology (BS-12) Category C Hospital Shabqader Charsadda.

NO 60-46 /DHO Charsadda
Copy to:

1. Registrar Khyber Pakhtunkhwa, Service Tribunal Peshawar
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar
3. MS Category C Hospital Shabqadar
4. DAO Charsadda
5. Accounts section DHO office Charsadda
6. Mrs. Mehnaz Begum FJCT Cardiology (BS-12) Category C Hospital Shabqadar
For information and compliance.

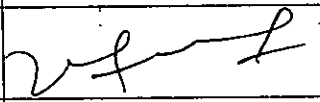


9/
DISTRICT HEALTH OFFICER
CHARSADDA

Dated 01/01/2020

9/
DISTRICT HEALTH OFFICER
CHARSADDA

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ATTENDANCE SHEET
PERSONAL HEARING OF MS. MEHNAZ BEGUM FJCT CARDIOLOGY
DATED 12/12/2019

S. No	Name	Signature
1	Dr. Akhuzada Zafar Ali DHO Charsadda	
2	Dr. Ali Shah Litigation Officer	
3	Ms. Mehnaz Begum	



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 831 /ST

Dated: 31-3-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

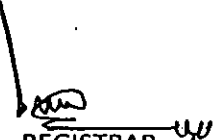
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Charsada.

Subject: JUDGMENT IN APPEAL NO. 4281/2020, MST. MEHNAZ BEGUM.

I am directed to forward herewith a certified copy of Judgement dated 02.02.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 941 /ST

Dated: 28-4-2022

All communications should be
addressed to the Registrar KPK Service
Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

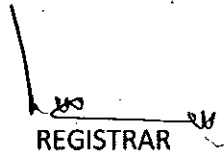
To

The District Health Officer,
Government of Khyber Pakhtunkhwa,
Charsada.

Subject: JUDGMENT IN APPEAL NO. 4281/2020 MST. MEHNAZ BEGUM.

I am directed to forward herewith a certified copy of Judgement dated
02.02.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 10TH MAY, 2016

GOVERNMENT OF THE KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

NOTIFICATION

Peshawar dated the 10th May 2016.

No.SOH-III/HD/3-5/2014 -In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of all Notifications issued in this behalf by the Health Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the Appendix to the posts of Paramedical Staff in the Health Department specified in column 2 of the said Appendix.

APPENDIX

S. No.	Nomenclature of the post.	Qualification for appointment by initial recruitment.	Age limits.	Method of recruitment.
1	2	3	4	5
1	Principal Technologist (i) Principal Clinical Technologist Dental; (ii) Principal Clinical Technologist Pharmacy; (iii) Principal Clinical Technologist Radiology; (iv) Principal Clinical Technologist Pathology;			By promotion, on the basis of seniority-cum-fitness, from amongst the Chief Technologists and Chief PHC Technologists with five years service in BS-19 or seventeen years service in BS-17 and above as such in the relevant technology.

	<p>(v) Principal Clinical Technologist Anesthesia; (vi) Principal Clinical Technologist Cardiology; (vii) Principal Clinical Technologist Surgical; (viii) Principal Clinical Technologist Dialysis; (ix) Principal Clinical Technologist Physiotherapy; (x) Principal Clinical Technologist Pulmonology; (xi) Principal Clinical Technologist Gastroenterology; and (xii) Principal Clinical Technologist Ophthalmology / otorhinolaryngology; and</p> <p><u>Principle PHC Technologist</u></p> <p>(i) Principal PHC Technologist (Multi Purpose); and (ii) Principal PHC Technologist (MCH).</p>			
2	<p><u>Chief Technologist</u></p> <p>(i) Chief Clinical Technologist Dental; (ii) Chief Clinical Technologist Pharmacy; (iii) Chief Clinical Technologist Radiology; (iv) Chief Clinical Technologist Pathology; (v) Chief Clinical Technologist Anesthesia; (vi) Chief Clinical Technologist Cardiology; (vii) Chief Clinical Technologist Surgical; (viii) Chief Clinical Technologist Dialysis; (ix) Chief Clinical Technologist Physiotherapy; (x) Chief Clinical Technologist Pulmonology; (xi) Chief Clinical Technologist Gastroenterology; and (xii) Chief Clinical Technologist Ophthalmology/ Otorhinolaryngology; and</p>			<p>By promotion, on the basis of seniority-cum-fitness, from amongst Senior Technologists and Senior PHC Technologists with seven years service in BPS-18 or twelve years service in BPS-17 and above as such in the relevant technology.</p>

	<p>Chief PHC Technologist</p> <p>(i) Chief PHC Technologist (Multi-Purpose); and (ii) Chief PHC Technologist (MCH).</p>			
3	<p>Senior Technologist</p> <p>(i) Senior Clinical Technologist Dental; (ii) Senior Clinical Technologist Pharmacy; (iii) Senior Clinical Technologist Radiology; (iv) Senior Clinical Technologist Pathology; (v) Senior Clinical Technologist Anesthesia; (vi) SCT Senior Clinical Technologist Cardiology; (vii) Senior Clinical Technologist Surgical; (viii) Senior Clinical Technologist Dialysis; (ix) Senior Clinical Technologist Physiotherapy; (x) Senior Clinical Technologist Pulmonology; (xi) Senior Clinical Technologist Gastroenterology; and (xii) Senior Clinical Technologist Ophthalmology/Otorhinolaryngology; and</p> <p>Senior PHC Technologist</p> <p>(i) Senior PHC Technologist (Multi-Purpose); and (ii) Senior PHC Technologist (MCH).</p>	<p>At least Second Class Master's Degree or B.SC Honours/ BS (04-years) in the relevant technology or equivalent qualification from a recognized University / Institution.</p>	<p>20-35 years</p>	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Technologists and PHC Technologists with five years service as such in the relevant technology; and (b) fifty percent by initial recruitment.</p>
4	<p>Technologist</p> <p>(i) Clinical Technologist Dental; (ii) Clinical Technologist Pharmacy; (iii) Clinical Technologist Radiology; (iv) Clinical Technologist Pathology; (v) Clinical Technologist Anesthesia;</p>	<p>At least Second Class Bachelor's Degree in the relevant Technology from a recognized University/ Institution.</p>	<p>18-32years</p>	<p>(a) Forty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Chief Technicians and Chief PHC Technicians with three years service as such in the relevant technology;</p>

	<p>(vi) Clinical Technologist Cardiology; (vii) Clinical Technologist Surgical; (viii) Clinical Technologist Dialysis; (ix) Clinical Technologist Physiotherapy; (x) Clinical Technologist Pulmonology; (xi) Clinical Technologist Gastroenterology; and (xii) Clinical Technologist Ophthalmology / Otorhinolaryngology); and</p> <p>PHC Technologist</p> <p>(i) PHC Technologist (Multi-Purpose); and (ii) PHC Technologist (MCH).</p>		<p>(b) twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Chief Technicians, Senior Technicians and Technicians having qualification prescribed for initial recruitment with three years service as such in the relevant technology.</p> <p>Note: For the purpose of promotion, there shall be maintained a joint seniority list of Chief Technicians, Senior Technicians and Technicians with reference to the dates of their acquiring qualification prescribed for initial recruitment as in column No. 3:</p> <p>Provided that if two or more officials acquired the qualification prescribed for initial recruitment in the same session, then the official who obtains the highest marks or grade in the examination shall be deemed to be senior to the other officials; and</p> <p>(c) forty percent by initial recruitment.</p>
5	<p>Chief Technician</p> <p>(i) Chief Clinical Technician Dental; (ii) Chief Clinical Technician Pharmacy; (iii) Chief Clinical Technician Radiology; (iv) Chief Clinical Technician Pathology; (v) Chief Clinical Technician Anesthesia; (vi) Chief Clinical Technician Cardiology; (vii) Chief Clinical Technician Surgical; (viii) Chief Clinical Technician Dialysis; (ix) Chief Clinical Technician Physiotherapy; (x) Chief Clinical Technician Pulmonology; (xi) Chief Clinical Technician Gastroenterology; and</p>		<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Technicians and Senior PHC Technicians with at least two years service as such in the relevant technology.</p>

	<p>(xii) Chief Clinical Technician Ophthalmology, (Otorhinolaryngology); and</p> <p>Chief PHC Technician</p> <p>(i) Chief PHC Technician (Multi-Purpose); and (ii) Chief PHC Technician (MCH).</p>			
6	<p>Senior Technician</p> <p>(i) Senior Clinical Technician Dental; (ii) Senior Clinical Technician Pharmacy; (iii) Senior Clinical Technician Radiology; (iv) Senior Clinical Technician Pathology; (v) Senior Clinical Technician Anesthesia; (vi) Senior Clinical Technician Cardiology; (vii) Senior Clinical Technician Surgical; (viii) Senior Clinical Technician Dialysis; (ix) Senior Clinical Technician Physiotherapy; (x) Senior Clinical Technician Pulmonology; (xi) Senior Clinical Technician Gastroenterology; and (xii) Senior Clinical Technician Ophthalmology/ Otorhinolaryngology); and</p> <p>Senior PHC Technician</p> <p>(i) Senior PHC Technician (Multi-Purpose); and (ii) Senior PHC Technician (MCH).</p>			<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Technicians and PHC Technicians with at least two years service as such in the relevant technology.</p>
7	<p>Technician</p> <p>(i) Clinical Technician Dental; (ii) Clinical Technician Pharmacy; (iii) Clinical Technician Radiology; (iv) Clinical Technician Pathology; (v) Clinical Technician Anesthesia; (vi) Clinical Technician Cardiology; (vii) Clinical Technician Surgical; (viii) Clinical Technician Dialysis; (ix) Clinical Technician Physiotherapy; (x) Clinical Technician Pulmonology; (xi) Clinical Technician Gastroenterology; and</p>	<p>(i) Technician/PHC Technician : At least Second Division Secondary School Certificate with Science from a recognized Board with Diploma in the relevant Paramedical Technology from Khyber Pakhtunkhwa Medical Faculty or Diploma in the relevant Paramedical technology from any recognized institution, provided that the same is registered with the Medical Faculty Khyber Pakhtunkhwa Peshawar, and</p>	18-30 years	By initial recruitment

<p>PHC Technician</p> <p>(i) PHC Technician (Multi-Purpose); and (ii) PHC Technician (MCH).</p>	<p>(ii) PHC Technician (MCH): Secondary School Certificate with at least Second Division in Science from a recognized board and Diplomas of LHV and Midwifery from recognized Nursing Examination Board.</p>		
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SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT