

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Dated Peshawar the 13th September, 2018

NOTIFICATION

NO.SOH(E-V)7-589/2018 The Competent Authority is pleased to order posting/transfer of Dr.Adnan Khan Management Cadre BS-17 DMS(Admn) Moulvi Ameer Shah Memorial Hospital Peshawar against the vacant post of Agency Surgeon District Khyber (BS-18) in his own pay and scale, with immediate effect in the public interest.

**SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa**

Endst. No. & Date Even

Copy to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. Director Health Service (Tribal Districts).
4. District Health Officer Khyber
5. MS Moulvi Ameer Shah Memorial Hospital Peshawar
6. District Accounts Officer Khyber
7. PS to Minister Health Khyber Pakhtunkhwa.
8. PS to Secretary Health Department.
9. Computer Programmer Health Department
10. Doctor concerned.


(MUHAMMAD IRFANUDDIN)
SECTION OFFICER (E-V)



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

Dated Peshawar the 10th September, 2018

NOTIFICATION

No.SOH(E-V)4-20/2018 In Continuation of this Department Notification of even number dated 07th May, 2018, the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to induct the following doctors of the General Cadre, on their option, into the Health Management Cadre having the requisite qualification.

2. Their inter se seniority will be determined in the new Cadre in terms of Section-8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rule-17 of the Appointment, Promotion Transfer Rules, 1989.

S.#	NAME OF DOCTOR	FATHER NAME
1.	Dr.Khan Bahadar BS-19	Gul Akbar
2.	Dr.Muhammad Usman Shah BS-18	Muhammad Zahir Shah
3.	Dr.Shiraz Ahmad BS-18	Rashid Ahmad
4.	Dr.Shafqatullah BS-17	Amir Hamza
5.	Dr.Fayyaz Ali Roomi BS-17	Humayun Roomi
6.	Dr.Muhammad Javed Khan BS-20	Shah Zaman Khan
7.	Dr.Syed Gul Hussain Syed BS-18	Syed Shah Jehan
8.	Dr.Wasiullah BS-18	Shakirullah
9.	Dr.Jameel Ahmad BS-18	Abdullah
10.	Dr.Farman Ali BS-18	Muhammad Naseem
11.	Dr.Waseem Ahmad BS-19	Qazi Muhammad Saleem
12.	Dr.Irfanuddin BS-17	Habibul Mukhtar
13.	Dr.Shaukat Saleem Khan BS-18	Saleem Khan
14.	Dr.Sardar Aurangzeb BS-19	Sardar Muhammad Ashraf
15.	Dr.Shah Faisal BS-19	Ronaq Zaman
16.	Dr.Zahir Shah BS-19	Bahadar Khan
17.	Dr.Irshad Ali BS-17	Muhammad Razaq
18.	Dr.Muhammad Farooq Gul BS-18	Gul Muhammad
19.	Dr.Muhammad Alamgir BS-17	Nisar Muhammad
20.	Dr.Bakht Belanad BS-17	Fazal Rehman
21.	Dr.Khalid Khan BS-17	Shah Muhammad Khan
22.	Dr.Jamaluddin BS-18	Muhammad Din
23.	Dr.Sherin Muhammad BS-17	Bacha Muhammad
24.	Dr.Saeedullah Khan BS-19	Mukarram Khan
25.	Dr.Erum Qayum BS-17	Syed Qayum
26.	Dr.Nazar Muhammad BS-18	Bakht Sar
27.	Dr.Zeeshan BS-17	Said Ali Khan
28.	Dr.Fakhr-e-Alam BS-17	Sultan Room
29.	Dr.Hammad BS-18	Said Badshah
30.	Dr.Muhammad Arif Khan BS-18	Amir Nawaz Khan
31.	Dr.Waqar Ahmad BS-17	Mehboob Ali
32.	Dr.Sagheer Ahmad BS-18	Noor Elahi
33.	Dr.Ikramullah BS-17	Yar Jan
34.	Dr.Muhammad Sadiq BS-18	Muhammad Anis
35.	Dr.Humera Semab BS-17	Malik Khan Muhammad
36.	Dr.Kamran Yousaf BS-18	Muhammad Yousaf
37.	Dr.Muhammad Wali Ali BS-17	Muhammad Anam
38.	Dr.Naseeb Gul BS-17	Haseeb Gul
39.	Dr.Muhammad Mudassar Iqbal Khan BS-17	Muhammad Iqbal Khan

Section Officer
Health Department
Khyber Pakhtunkhwa

40.	Dr.Naik Muhammad BS-18	Khawaja Muhammad
41.	Dr.Sohrab Ali BS-17	Azizullah Khan
42.	Dr.Noor Islam BS-17	Sheraz Gul
43.	Dr.Saeeda Bibi BS-18	Daud Khan
44.	Dr.Muhammad Hayat BS-19	Muhammad Amir
45.	Dr.Muhammad Sajjad BS-17	Muhammad Saeed
46.	Dr.Muhammad Arif BS-18	Gulbar Khan
47.	Dr.Ataullah BS-17	Khair Muhammad
48.	Dr.Khizar Hayat BS-18	Pir Muhammad Khan
49.	Dr.Jamshid Saeed BS-18	Saeed Ahmad
50.	Dr.Salleem Khan BS-17	Muhammad Akbar Khan
51.	Dr.Tariq Khan BS-19	Rasool Khan
52.	Dr.Muhammad Tahir Khan BS-18	Faiz Muhammad Khan
53.	Dr.Muhammad Umar BS-18	Gul Muhammad
54.	Dr.Ghani-ur Rehman BS-19	Abdul Ghani
55.	Dr.Mian Habib-ur-Rehman BS-19	Mian Fazlur Rehman
56.	Dr.Syed Rehmat Ali BS-17	Mian Gul Zada
57.	Dr.Muhammad Kashif Shahid Khan BS-17	Jamandos Khan
58.	Dr.Shahzada Muhammad Haider-ul-Mulk BS-19	Shahzada Muta-ul-Mulk
59.	Dr.Daud Khan BS-18	Muhammad Rahim Khan

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

Endst. of Even No. & Date.

Copy to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. PSO to Chief Minister Khyber Pakhtunkhwa Peshawar
3. PSO to Chief Secretary Khyber Pakhtunkhwa
4. Director General Health Services, Khyber Pakhtunkhwa
5. Director General Provincial Health Services Academy Peshawar
6. All Medical/Hospital Directors of MTIs in Khyber Pakhtunkhwa
7. All District Health Officers in Khyber Pakhtunkhwa
8. All Medical Superintendents in DHQ Hospitals Khyber Pakhtunkhwa
9. All District Accounts Officers in Khyber Pakhtunkhwa
10. PS to Minister Health Khyber Pakhtunkhwa.
11. PS to Secretary Health Department
12. PS to Special Secretary, Health Department.
13. Manager Govt Printing Press Khyber Pakhtunkhwa
for publishing in the official gazette
14. Computer Programmer Health Department.
15. Doctor concerned.


(MUHAMMAD IRFANUDDIN)
SECTION OFFICER(E-V)

Section Officer (E-V)
Health Department
Khyber Pakhtunkhwa

VAKALATNAMA

IN THE COURT OF KP Service Tribunal, Peshawar

OF 2018

Dr. Shams-ud-Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We All Privat Respondents 3 to 90

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. 28 /09 /2018

Saleem
DR. MUHAMMAD SALEEM (#3)

CLIENT

Accepted
NOOR MOHAMMAD KHATTAK
ADVOCATES








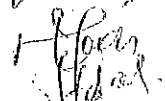
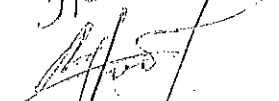

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S. NO NAME SIGNATURE

- 2) DR. NIAZ MUHAMMAD (S#13) 
- 3) DR. M. RIAZ TANOLI (S#84) 
- 4) DR. M. KHALIL AKHTAR (S#33) 
- 5) DR. MAJID KHAN (S#29) 
- 6) DR. QASIM ABBAS (S#50) 
- 7) DR. M. DOST KHAN (S#68) 
- 8) DR. AMIR RAFIQ KHATTAK (S#36) 
- 9) DR. MAKHOOM SAFDAR (S#39) 
- 10) DR. MUHAMMAD MUNIR (S#9) 
- 11) DR. AZIZ KHAN (S#43) 

BEFORE THE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Service Appeal No.830 /2018.

Dr. Sams-Ur-Rehman

VERSUS

Government of Khyber Pakhtunkhwa and others.

I N D E X

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SECTION OFFICER
GOVT: OF KHYBER PAKHTUNA
HEALTH DEPARTMENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal 830/2018

Dr. Shamsur Rehman.....**Appellant**

Versus

1. Govt of Khyber Pakhtunkhwa Chief Secretary.
2. Govt of Khyber Pakhtunkhwa Secretary Health..... Respondents.

Written comments on behalf of Respondent No.1 and 2

PRELIMINARY OBJECTIONS.

1. That the appellant has neither a cause of action nor locus standi.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to the Tribunal with clean hands.
4. That the appeal is bad due to non-joinder and mis-joinder of necessary party.
5. That the appeal is time barred.
6. The honorable Tribunal has no jurisdiction to adjudicate the matter.


FACTS.

1. Correct to the extent that the appellant was appointed as Member of Service in BS-17 in Health Department.
2. Correct to the extent that the respondents No.3 to 90 were inducted into the Health Management Cadre after proper approval from the competent authority (Chief Minister Khyber Pakhtunkhwa) vide Health Department Notification dated 7.5.2018. It is also added here that the above doctors were inducted as per judgment of the Khyber Pakhtunkhwa Service Tribunal and Supreme Court of Pakistan (**Annex- A and B**).
3. Correct to the extent that the Health Management Cadre Services Rules, 2008 were notified on 11.12.2008 and subsequently published in the official gazette. In terms of Rule-10 of the Health Management Cadre Rules, 2008, the Director General Health Services Khyber Pakhtunkhwa issued a circular letter giving a time frame of one week with regard to the induction/absorption of eligible doctors of the General Cadre into the Health Management Cadre and the cadre came into being in 2009. It is added here that one Dr.Sher Muhammad and others of the General Cadre filed Service Appeal in the Khyber Pakhtunkhwa Service Tribunal. The Tribunal in its judgment dated 3.1.2012 ordered that "Notwithstanding anything contained in the provision of these rules, Govt shall , as one-time exercise, fill in posts in the service described in Schedule-I by way of permanent transfer from amongst the officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Post Graduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning & Management or equivalent Master Degree/Diploma in Health Management or allied disciplines and opt for absorption provided that the option once exercised shall be final".

4. Incorrect. Health Department inducted the General Cadre doctors having holding of MPH Degrees as per judgment of the Khyber Pakhtunkhwa Service Tribunal and thereafter as per judgment of the Supreme Court of Pakistan.
5. Incorrect. As per the judgment of the Khyber Pakhtunkhwa Service Tribunal dated 3.1.2012 that " provided further that for a period of two years who are in regular and continuous service on the said date shall be entitled to improve their qualification as these rules exercise the option (**Annex-C**).
6. Incorrect. As mentioned in Para-3 above.
7. Incorrect. The competent authority has approved the summary regarding induction of the General Cadre doctors into the Management Cadre having holding of MPH Degrees as far as the seniority of these doctors is concerned, the same will be entertain as per Section-8 and Rule 17 of the Appointment, Promotion and Transfer Rules, 1989 as mentioned in this Department Notifications dated 07.05.2018.
8. Incorrect. As per the judgment of the Khyber Pakhtunkhwa Service Tribunal dated 03.01.2012, the cushion period of induction into the Health Management Cadre was given to all those doctors having holding of MPH Degrees with effect from May, 2017 to May, 2019 (**Annex-C/ibid**). The judgment of the honorable Service Tribunal on this point is very clear and there is no ambiguity. It is also added here that there is no any doctor of the General Cadre who have not holding the continuous service.
9. Incorrect. There is no illegality in the Notification dated 07.05.2018. Moreover the sufficient posts of Management Cadre BS-18 are lying vacant. The promotion of the old Management Cadre doctors will not suffer on this way.
10. As mentioned in Para-8 above.
11. Incorrect. The General Cadre doctors holding MPH degrees have been inducted in to the Health Management Cadre as per Judgment of the Khyber Pakhtunkhwa Service Tribunal and Supreme Court of Pakistan. The competent authority Chief Minister Khyber Pakhtunkhwa has inducted the General Cadre doctors into the Management as per Rule-10 of the Health Management Cadre Rules, 2008 (**Annex-D**).
12. Incorrect. The appellants were treated as per law.

It is therefore, requested that the appeal of the appellants may be dismissed with cost.

Chief Secretary
Khyber Pakhtunkhwa.
(Respondent No.1)


27/12/2018
Secretary Health,
Khyber Pakhtunkhwa
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Respondent No.2)



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

Dated Peshawar the 7th May, 2018

NOTIFICATION

No.SOH(E-V)4-20/2018 In pursuance of the Judgment dated 03.01.2012 of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.513 of 2010, upheld by the Honorable Supreme Court of Pakistan vide judgment dated 03.11.2016; in C.As No.320-324 of 2012 and CA No.126-P to 130-P of 2013, and in-term of Section-10 of the Health Management Cadre Rules, 2008, the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to induct the following doctors of the General Cadre, on their option, into the Health Management Cadre having the requisite qualification.

2. Their inter se seniority will be determined in the new Cadre in terms of Section-8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rule-17 of the Appointment, Promotion Transfer Rules, 1989.

S.No	NAME OF DOCTOR	FATHER NAME
1.	Dr.Muhammad Saleem BS-19	Inayat-Ur-Rehman
2.	Dr.Muhammad Ismail BS-18	Said Muhammad
3.	Dr.Shahid Mehmood BS-18	Sardar Muhammad Aslam
4.	Dr.Muhammad Mustafa Alam BS-18	Nasrullah Jan
5.	Dr.Khalilur Rehman BS-18	Ali Rehman
6.	Dr.Muhammad Shuaib, BS-20	Muhammad Ajab
7.	Dr.Muhammad Munib BS-18	Sher Ali Khan
8.	Dr.S.Muhammad Taimur Shah BS-18	Pir Ferooz Shah
9.	Dr.Firdos Jabeen BS-18	Muhammad Aslam Khan
10.	Dr.Kalimullah Khan BS-19	Eid Gul
11.	Dr.Niaz Muhammad BS-18	Dost Muhammad
12.	Dr.Zafir Ullah Khan BS-19	Ghulam Sarwar
13.	Dr.Saeed ur Rehman BS-18	Haji Fazli Rehman
14.	Dr.Aamir Israr BS-18	Irsar Muhammad Khan
15.	Dr.S.Shaida Hussain Shah Bukhari BS-18	S. Fida Hussain Shah Bukhari
16.	Dr.Muhammad Shafiq BS-18	Akbar Gul
17.	Dr.Muhammad Rahim BS-19	Gul Rahim
18.	Dr.Mushtaq Ahmad BS-18	Fazal Khan
19.	Dr.Shabnum Khawas BS-17	Lal Khawas Khan
20.	Dr.Ahmad Tariq BS-17	Tariq Tanveer
21.	Dr.Khan Askar BS-19	Muhammad Askar
22.	Dr.Faisal Malik BS-17	Fazli Malik Sarim
23.	Dr.Bilal Bahrawar Khan BS-17	Bahrawar Khan
24.	Dr.Tanveer Inam BS-17	Inamullah
25.	Dr.Muhammad Saleem Khan BS-19	Fazal Rahim Khan
26.	Dr.Alamgir Khan BS-18	Darwesh Khan

27.	Dr.Majid Khan BS-17	Muhammad Humayun Khan
28.	Dr.Ihsanullah BS-19	Ghulam Muhammad
29.	Dr.Aurangzeb Afridi BS-18	Ghulam Hussain Afridi
30.	Dr.Shafiqul Mulik BS-19	Hazrat Mulik Khan
31.	Dr.Muhammad Khalil Akhtar BS-18	Muhammad Yousaf Khan
32.	Dr.Farhad Khan BS-19	Purdil Khan
33.	Dr.Muhammad Farid BS-17	Khalsta Azam
34.	Dr.Aamir Rafiq Khattak BS-18	Muhammad Rafiq Khattak
35.	Dr.Jehanzeb Khan BS-19	Ihsanullah Khan
36.	Dr.Alif Jan BS-18	Amir Jan
37.	Dr.Makhdoom Safdar BS-17	Safdar Hussain Awan
38.	Dr.Shumaila Malik BS-17	Malik Farid Khan
39.	Dr.Muhammad Kamal BS-18	Muhammad Sharif Khan
40.	Dr.Noor Saeed Khan BS-19	Muhammad Saeed Khan
41.	Dr.Aziz Khan BS-18	Jaffar Khan
42.	Dr.Ghulam Rasool Khan BS-19	Shadi Gul Khan
43.	Dr.Muhammad Iqbal Javed BS-20	Fatehullah Khan
44.	Dr.Kamran Zakria BS-18	Ghulam Zakria Khan
45.	Dr.Sheikh Muhammad Farooq Azam BS-18	Sheikh Muhammad Bashir Gohar
46.	Dr.Naimatullah Zia BS-19	Amir Shah
47.	Dr.Muhammad Israrul Haq BS-17	Abdur Rashid Khan
48.	Dr.Qasim Abbas BS-18	Saifur Rehman
49.	Dr.Muhammad Hayat BS-17	Haji Akbar Gul
50.	Dr.Muhammad Ibrahim Khan BS-18	Abdul Halim Khan
51.	Dr.Sheraz Ahmad Khan BS-17	Muhammad Akram Khan
52.	Dr.Adnan Khan BS-17	Muhammad Zahir Shah
53.	Dr.Syed Ijaz Ali Shah BS-18	Syed Abdul Qayum Shah
54.	Dr.Fazal Majeed BS-18	Muhammad Aslam
55.	Dr.Muhammad Bilal Khan BS-17	Muhammad Daud
56.	Dr.Majid Saleem BS-17	Allah Dad Khan
57.	Dr.Fazal Qayum BS-17	Abdur Rehman
58.	Dr.Ali Asghar Khan BS-18	Abdul Akbar Khan
59.	Dr.Muhammad Azhar Shah BS-17	Israr ul Arifin
60.	Dr.Saira Jabeen Shah BS-17	Amt Ali Shah
61.	Dr.Roshan Zada BS-18	Said Latif
62.	Dr.Javid Iqbal BS-19	Amir Bahadar
63.	Dr.Shaima Malik BS-17	Fazli Malik Sarim
64.	Dr.Pirzada BS-17	Bahadar
65.	Dr.Shahab Ahmad BS-19	Abdur Rehman
66.	Dr.Muhammad Dost Khan BS-18	Zahir Gul
67.	Dr.Muhammad Riaz BS-18	Gohar Khan
68.	Dr.Kashmir Khan BS-19	Aslam Khan
69.	Dr.Tariq Hayat BS-17	Fazal Hayat Taj
70.	Dr.Muhammad Sohail Farooqi BS-17	Muhammad Aqeel Farooqi
71.	Dr.Abdul Waheed BS-19	Abdul Hameed
72.	Dr.Hafizullah Khan BS-17	Amanullah Khan
73.	Dr.Zakir Hussain BS-18	Hakim Khan
74.	Dr.Qazi Sabihuddin BS-19	Qazi Ghulam Mustafa
75.	Dr.Ijaz Ahmad BS-18	Bashir Ahmad
76.	Dr.Sher Muhammad BS-20	Shah Muhammad

77.	Dr.Wakeel Muhammad BS-20	Taj-ul-Malook
78.	Dr. Suffian Khan BS-17	Muhammad Tanveer
79.	Dr.Muhammad Naeem BS-18	Habibullah Khan
80.	Dr.Ikramullah BS-20	Amanullah Khan
81.	Dr.Muhammad Shoaib BS-18	Azizur Rehman
82.	Dr.Muhammad Riaz Tanoli BS-18	Said Ozar
83.	Dr.Inayatullah Khan BS-18	Saifullah Khan
84.	Dr.Wazir Khan BS-18	Rookam Khan
85.	Dr.Uzama Jabeen BS-18	Taj Muhammad
86.	Dr.Dildar Khan BS-18	Abdul Ghaffar
87.	Dr.Mohsin Ahmad BS-18	Taj Muhammad Khan
88.	Dr.Abbas Khan BS-18	Ajab Khan

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

Endst. of Even No. & Date.

Copy to the:-

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6. Director Health Services FATA, Peshawar.
7. All Medical/Hospital Directors of MTIs in Khyber Pakhtunkhwa
8. All District Health Officers in Khyber Pakhtunkhwa
9. All Medical Superintendents in DHQ Hospitals Khyber Pakhtunkhwa
10. All District Accounts Officers in Khyber Pakhtunkhwa
11. PS to Minister Health Khyber Pakhtunkhwa.
12. PS to Secretary Health Department
13. PS to Special Secretary, Health Department.
14. Manager Govt Printing Press Khyber Pakhtunkhwa
for publishing in the official gazette
15. Computer Programmer Health Department.
16. Doctor concerned.


SECTION OFFICER (E-V)

Annex-B
324/2012
3

(D)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No: 513/2010.

Date of Institution .. 22.2.2010
Date of Decision .. 03.1.2012

Dr. Sher Muhammad S/O Shah Muhammad,
Provincial Manager, Aids Control Programme,
Peshawar.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Department, Govt. of Khyber-Pakhtunkhwa, Health Department, Peshawar.
3. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Chairman, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
5. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
6. Secretary Law Department, Government of Khyber Pakhtunkhwa, Peshawar.
7. Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
8. Dr. Ali Ahmad (BPS-19) Programme Manager, DHIS, Khyber Pakhtunkhwa, Peshawar and 22 others.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT I/W RELEVANT SERVICE RULES AGAINST THE IMPUGNED NOTIFICATION ISSUED BY RESPONDENT NO.1 U/S 26 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 WHEREBY NOTIFICATION DATED 11.12.2008 KNOWN AS KHYBER PAKHTUNKHWA HEALTH (MANAGEMENT) SERVICE RULES, 2008, VIDE WHICH SERVICE STRUTURE WAS CHANGED AND "MANAGEMENT CADRE" WAS INTRODUCED IN HEALTH DEPARTMENT.

MR. AMINUR RAHMAN,
Advocate

For appellant.

MR. SHERAFGAN KHATTAK,
Addl. Government Pleader

For official respondents.

MR. BILAL AHMAD KAKAIZAI,
Advocate.

For respondents.

SYED MANZOOR ALI SHAH,
MR. KHALID HUSSAIN.

MEMBER.

MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER- This appeal has been filed by Dr. Sher Muhammad, appellant under Section 4 of the Khyber Pakhtunkhwa, Service Tribunal Act, 1974, against the notification F1.12.2008 known as Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 vide which service structure was changed and "Management Cadre" was introduced in the Health Department. It has been prayed that on acceptance of the appeal, the impugned notification may be declared as illegal, unlawful, void-abinitio and of no legal effect, being coram non-judice.

2. Brief facts of the case as averred in the memo: of appeal are that the appellant being MBBS Graduate, entered into government service, Health Department, Government of Khyber Pakhtunkhwa in the year, 1985. Respondent No.1, in exercise of the powers conferred by Section 26 of the North West Frontier Province Civil Servants Act, 1973 vide notification dated 11.12.2008 made Rules known as Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, vide which Service Structure was changed and "Management Cadre" was introduced in Health Department. Feeling aggrieved, the appellant filed Writ Petition No. 2382/2009 before the Hon'ble Peshawar High Court, Peshawar which was disposed off in limine on 10.11.2009, with direction to the departmental authority, to decide the representations of the appellant pending before them within one month positively in accordance with the law. The respondents did not comply with the direction of the Hon'ble Peshawar High Court, Peshawar, therefore, the appellant filed contempt of court petition No. 10/2010, for implementation of order dated 10.11.2009, which was disposed off on 9.2.2010, with observation that the appellant could file appeal before the Service Tribunal after the expiry of ninety days, hence this appeal.

3. After admission of the appeal, notices were issued to the respondents. Respondents No. 1,2,3,5 and 7 have filed their joint written reply. Respondent No.4 was not a necessary party; hence his name was deleted from the list of respondents vide order dated 19.8.2010. Private respondents have filed written reply through their counsel and contested the appeal.

4. Arguments heard and record perused.

5. The learned AAG at the very outset pointed out that Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 have been formulated by the Governor of the province in exercise of powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, according to which the Governor or any

... authorized by him in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purpose of this Act i.e. Civil Servant Act, 1973; Section 2(b) which is a general statute i.e. rules can be framed for Civil Servants Act, 1973 and under it rules for any particular cadre cannot be made, delegatory legislation for Health Department can not be performed under this Section. Any rules for a particular cadre can be done only through Act of parliament and the Section 2(b) does not confer inherited power for further legislation for any specific cadre. He further argued that this Tribunal has no jurisdiction to entertain the present appeal as the validity of the notification/rules should have been challenged and that the present appeal is time-barred.

4. On the point of jurisdiction, the learned counsel for the appellant argued that through the impugned notification/rules, terms and conditions of service of the appellant have been affected, which can be challenged before this Tribunal, having vast power to confirm, set aside, vary or modified the order challenged before it. The Service Tribunal has vast jurisdiction to redress the grievances of the persons before it. The learned counsel for the appellant relied on PLD 2003-Supreme Court-724(d). Regarding limitation, the counsel for the appellant stated that the appellant had been diligently pursuing his remedy before the Hon'ble Peshawar High Court and the period spent before the wrong forum can be condoned by the Service Tribunal in view of the august Supreme Court judgment reported in 2004-SCMR-1419.

6. The learned counsel for the appellant stated that the appellant is mainly aggrieved from Rule 10 of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, wherein it has been stated that notwithstanding anything contained in the provision of those Rules, Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning and Management or equivalent Master's Degree/Diploma in Health management or allied disciplines and opt for absorption. It shows that no chance/time period has been given to the appellant to improve his qualification required and has been confined to General Cadre and is to be carried out as one time exercise, whereby denying him chances of further promotion which is highly discriminatory. In this respect, he referred to Provincial Management Service Rules notified on 11.5.2007. In para-7 of the said rules the cushion period of seven years has been provided. The General Headquarters MS. Branch, Rawalpindi issued MS Branch Policy Compendium 2003, Amendment No.2/2010, wherein two

ACCEPTED

4
cushion period has been provided to enable max GDMOs to acquire LPG, the Directorate was directed to ensure that equal opportunity is afforded to all GDMOs to acquire LPG, and that modalities may also be evolved to get LPG, through evening programme/distant learning approved from PM&DC.

7. The learned counsel for private respondents argued that the government felt to achieve better results for which Administrative and Professional Cadres were separated and introduced "Management Cadre" & "General Cadre" through the Health (Management) Service Rules, 2008. Since the appellant basically belongs to General Cadre and had not acquired the requisite qualification for Management Cadre, therefore, his name has been brought on the strength of General Cadre. He further argued that on formation of Management Cadre, no financial loss occurred to the appellant nor his seniority has been disturbed. He requested that the appeal may be dismissed.

8. The Tribunal observes that Section 10 of the said rules does not provide any cushion period and denying chance to improve qualification for joining the management cadre to the appellants. The same be modified to the extent that two years cushion period be allowed to all those who wish to improve qualification as per Health (Management) Service Rules, and to join Management cadre if they succeeded in acquiring the requisite qualification as per the aforementioned Rules. This would however, not entitle the appellants and others not having requisite qualifications for posting in the Management Cadre posts but only provide them a cushion period and if they acquire the requisite qualification within 2 years from the date of the decision, they may opt and join Management Cadre without effecting their seniority/service.

9. With the above variation/modification in the impugned notification dated 11.12.2008, the present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record.

10. This order will also dispose of the following connected appeals No. 514/2010, Dr. Gul Akbar, No. 515/2010, Dr. Wakeel Muhammad, No. 516/2010, Dr. Shaukat Ali, and No. 517/2010, Dr. Syed Mujahid Hussain, in the same manner.

ANNOUNCED
3.1.2012

Sd/- Syed Manzoor Ali Shah, Member

Sd/- Khalid Hussain, Member

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Annex-B

7

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Umar Ata Bandial

C.As.No.320-324 of 2012

AND

C.As.No.126-P to 130-P of 2013

(On appeal against common judgment dated 03.01.2012
passed by the Khyber Pakhtunkhwa Service Tribunal,
Peshawar, In Appeals No.513-517 of 2010)

Dr. Muhammad Saleem & others. (In C.As.No.320-324)
Government of KPK through Secretary (In C.As.No.126-130-P)
Health Department, Peshawar and others. Appellant (s)

VERSUS

Dr. Sher Muhammad & others. (In C.As.No.320 & 126-P)
Gul Akbari & others. (In C.Ad.No.321 & 127-P)
Dr. Wakil Muhammad & others. (In C.As.No.322 & 128-P)
Dr. Shaikat Ali & others. (In C.As.No.323 & 129-P)
Dr. Syed Mujahid Hussain & others. (In C.As.No.324 & 130-P)
Respondent (s)

For the Appellant (s) : Mr. Ijaz Anwar, ASC
(In C.As.No.320-324)

For the Appellant (s) : Mr. Waqar Ahmed Khan,
(In C.As.No.126-130-P) & for Government Addl. A.G.KPK
Respondents In C.As.No.320-324

For Respondent No.1 : Mian Muhibullah Kakakhel, ASC
(In C.As.No.320-324)

For Respondent No.1 : Mr. Isaac Ali Qazi, ASC
(In C.As.No.126-130-P)

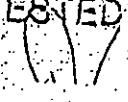
Date of Hearing : 03.11.2016

ORDER

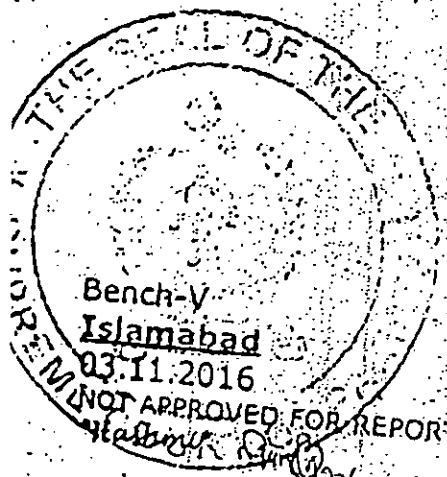
CULZAR AHMED, J.— Civil Appeals No.320 to 324 of 2012 have been
filed by Dr. Muhammad Saleem & others while Civil Appeals No.126-P
to 130-P of 2013 have been filed by the Government of KPK against
one and single judgment dated 03.01.2012 of the Khyber
Pakhtunkhwa Service Tribunal, Peshawar. Learned ASC for the

ATTESTED

appellants in Civil Appeals No.320 to 324 of 2012 has contended that if the judgment of the KPK Service Tribunal (Tribunal) is allowed to prevail, the appellants seniority is likely to be effected. On the other hand, learned Additional Advocate General, KPK appearing for the appellants in Civil Appeals No.126-P to 130-P of 2013 has contended that the Tribunal has exceeded its jurisdiction by enlarging the scope of Rule 10 of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 (Rules) as it did not make provision for providing cushion period for acquiring requisite qualification within two years for joining management cadre. It was noted that the Civil Appeals filed by the Government of Khyber Pakhtunkhwa (G.A.No.126-P for 196 days while G.A.Nos.127-P to 130-P for 203 days) were time barred and in the applications for condonation of delay common ground has been taken that filing of the appeals against the impugned judgment was delayed due to process of rendering opinion by the committee constituted in law department. It is obvious that this ground for condonation of delay in filing of a petition or appeal before this Court has never been accepted and the learned Additional Advocate General, KPK himself was quite at pains to substantiate the ground of condonation of delay as pleaded in the application. The rule for condonation of delay is well established and there has to be sufficient ground with explanation of each day's delay. In the present case before us neither any sufficient ground is urged nor each day's delay has been explained. We are not persuaded to allow the applications for condonation of delay filed by the Government of KPK, therefore, all these applications are dismissed. Resultantly, Civil Appeals No.126-P to 130-P of 2013 are dismissed as time barred.

ATTESTED


2. As regard the submission of the learned ASC for the appellants in Civil Appeals No. 320 to 324 of 2012 he was unable to explain before us as to how the seniority of the appellants will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting them seniority but that of allowing them to acquire qualification for opting in management cadre. ~~If the respondents do not join Management Cadre, their seniority will be counted from the date of their joining in the Management Cadre and not from any earlier period which is also established principle that a person joining fresh cadre is relegated to the lowest position of that cadre.~~ Thus, there seems to be hardly any reason much less justifiable to interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellants. The Civil Appeals No. 320 to 324 of 2012 are, therefore, dismissed.



Bench-V
Islamabad
03.11.2016
NOT APPROVED FOR REPORTING

Sd/- Gulzar Ahmed, J
Sd/- Umar Ata Bandial, J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

16.	Dr. Muhammad Shauq BS-10	
17.	Dr. Muhammad Rahim BS-19	Gul Rahim

NOTIFICATION.Peshawar dated the 10th May, 2017.

NO.SOH(E-V)4-20/2017 In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, the following amendments shall be made, namely;

AMENDMENTS.

- 1 In rule 10, in sub-rule (2), the full stop appearing at the end of the first proviso shall be replaced by colon and thereafter, the following second proviso shall be added, namely:

"Provided further that for a period of two years, from the date of issuance of this amending Notification, the officers of the General Cadre, who are in regular and continuous service and holding posts as such, shall be required to improve their qualification as per the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 to exercise the option under this rule"

- 2 In Schedule III,-

- (a) at serial No.3, for the figures "350", "300" and "150", the figures "250", "200" and "100" shall respectively be substituted;
- (b) serial No.4, shall be deleted; and
- (c) under the heading "General Compulsory subject" (350 marks), in the table", for serial No.5 and 6, the following shall be substituted, namely:

"5.	"Pakistan Affairs and Islamiyat".	100".
-----	-----------------------------------	-------

3. In schedule-IV, in heading "Topics" for the existing entries, the following shall, respectively, be substituted, namely;

"Topics"

- Communication and advocacy in Health.
- Existing Health Policies;
- Health system in Pakistan and its Challenges;
- DHIS Roles and responsibilities of Secretariat, Director General and DHO/MS,
- Role of Government and district government's in context of Local Government Act,
- Monitoring and supervision;
- Primary and Healthcare, Hospital Management, Waste disposal quality Management.
- Vertical programs and their linkages within the Health System.
- Rules of Business.
- Auditing and Accountant, General Financial Rules, ESTA Code etc; and
- The Khyber Pakhtunkhwa Civil Servant Act, 1973 "Fundamental rules and supplementary rules"



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 2nd NOVEMBER, 2016.

**GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE NWFP
HEALTH DEPARTMENT**

NOTIFICATION

Dated: 11th December, 2008.

No. SOHEV)4 - 20 / 08: In exercise of the powers conferred by section 26 of the North West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to make the following rules, namely:

**THE NORTH-WEST FRONTIER PROVINCE HEALTH
(MANAGEMENT) SERVICE RULES, 2008.**

**PART - I
GENERAL**

1. **Short title and commencement.** --- (1) These rules may be called the North-West Frontier Province Health (Management) Service Rules, 2008. (2)

They shall come into force at once.

2. **Definitions** --- In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say -

- (a) "appointing authority" in relation to a post, means the respective authority specified in para 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
- (b) "Commission" means the North-West Frontier Province Public Service Commission;
- (c) "Cadre" means Health Management Cadre;
- (d) "Government" means the Government of the North-West Frontier Province;
- (e) "Governor" means the Governor of the North-West Frontier Province;
- (f) "Initial recruitment" means appointment made otherwise than by promotion or transfer;
- (g) "Member of Service" means officer belonging to health management cadre as reflected in schedule I, II & III;
- (h) "PHSA" means Provincial Health Services Academy;

- (i) "Post" means a post specified in the Schedule-I of the rule and such other posts as may, from time to time, be determined by the Government;
- (j) "Schedule" means the schedule appended to these rules; and
- (k) "Service" means the North-West Frontier Province Health (Management) Service.

PART-II
RECRUITMENTS

3. **Number and nature of posts.**---The Service shall comprise the posts specified in the Schedule -I and such other posts as may be determined by Government from time to time.
4. **Method of Appointment.**---Method of appointment, qualifications and other conditions to applicable to a post in the Service shall be such as laid down in the column 3 to 5 of the Schedule - II.
5. **Syllabus and examination for appointment by initial recruitment.**--- Syllabus and standard for competitive examination for appointment by initial recruitment to the post in BS-17 shall be, as laid down in Schedule-III.

PART-III
CONDITIONS OF SERVICE

6. **Pre-Service Training & Departmental Examinations.**--- (1) On appointment to a post borne on the service in BS-17, every officer so appointed shall complete six months mandatory training including attachment as specified in schedule - IV.
- (2) The training shall be followed by departmental examination to be conducted by Provincial Health Services Academy, which will be part of probation period.
7. **In-Service Training.**---Selection for in-service trainings which are linked with promotion shall be done on seniority basis and those at verge of promotion shall be given priority.
8. **Private Practice.**--- (1) No Member of Service shall be allowed private practice, in lieu he shall be entitled to non-practicing allowance, at such rate as may be prescribed by Government.
- (2) In case of default, the Member shall be liable to disciplinary action under the law.
9. **General rule.**--- In all matters not expressly provided for in these rules, Members of Service shall be governed by such rules as have been or may hereafter be prescribed by Government from time to time.

Provided that in case of a dispute the Government shall have the final authority to decide the matter in any manner it deems fit.

10. One time exercise. --- (1) Notwithstanding anything contained in the provision of these rules, Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning & Management, or equivalent Master's Degree / Diploma in Health management or allied disciplines and opt for absorption.

Provided that the option once exercised, shall be final.

(2) Where the number of officers opting for absorption in Management Cadre is more than the available positions in respective grade, the selection under one time exercise shall be done on the basis of seniority-cum-merit only in the respective grade:

Provided that for determining the suitability of the officers, additional relevant qualifications, trainings/courses in the relevant field and managerial experience, as such, shall be taken into consideration.

11. Deletion of posts.---Posts reflected in the schedule-I shall stand deleted from any other service rules for the time being in force and such rules shall be deemed to have been amended to the above extent:

SECRETARY TO GOVERNMENT OF NWFP
HEALTH DEPARTMENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 830/2018

Dr. SHAMS-UR-REHMAN

VS

**HEALTH DEPTT:
&
OTHERS**

**REPLY ON BEHALF OF PRIVATE RESPONDENTS NO.3
TO 90 IN RESPONSE TO THE APPEAL SUBMITTED BY
THE APPELLANT**

R/SHEWETH:

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has no locus standi to file the instant appeal.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has concealed materials facts from this Honorable Tribunal.
5. That the instant appeal is not maintainable in its present form.
6. That the appeal is bad due to Non-Joinder & Mis-Joinder of necessary parties.
7. That the appeal is not maintainable in its present form.
8. That the appeal of the appellant is badly time barred.
9. That the appellant is estopped by his own conduct to file the instant service appeal.

ON FACTS:

1. Incorrect and misconceived. That in the instant Para the appellant concealed the fact that Khyber Pakhtunkhwa Health (Management) Service Rules has been notified in the official Gazette on 11.12.2008 whereas in fact the Rules were framed and properly notified in the official Government Gazette on 02.11.2016. Copy of the Rules is attached as annexure.....R.

2. Incorrect and misconceived. That the Notification dated 7.5.2018 has been issued by the competent authority, whereby the replying respondents have been inducted/absorbed in the management cadre on their option and as such they were assigned seniority in accordance with the Section-8 of the Civil Servant Act, 1973 read with Rule 17 of the Appointment, Promotion and Transfer Rules, 1989. Moreover the appellant failed to annex any documentary proof regarding directions of the Honourable Chief Justice of Pakistan, in fact no such directions have been issued by the Honorable Chief Justice of the Supreme Court of Pakistan. That the appellate authority in his order dated 25.5.2018 had clearly mentioned in the concluding Para that no such order regarding disposal of the Departmental appeal had been issued by the worthy Chief Justice and as such the authority had rightly regretted the Departmental appeal of the appellant vide order/letter dated 25.5.2018. Copy of the Notification dated 7.5.2018 is attached as annexure **R1.**

3. Incorrect and misconceived. That the said service Rules dated 11.12.2008 were properly been Notified in the official gazette vide Notification dated 2.11.2016. That the said Notification dated 2.11.2016 has no retrospective effect rather the same was issued with immediate effect. That in the light of the said Notification dated 2.11.2016 the replying respondents submitted their options for permanent induction/absorption in the management cadre through Departmental appeal and as such the competent authority issued the Notification dated 7.5.2018 whereby the replying respondents have been inducted/absorbed in the management cadre. Moreover according to the judgment of the Sindh High Court passed in C.P No.D-4679/2016 dated 25.11.2016 titled Sohail Ahmad & Others VS Province of Sindh & Others had declared while relying on the judgment of apex Court reported in 2008 SCMR 1148 "Notification not published in the official gazette would be invalid. Notified declaration could take effect from the date of publication in the gazette and not from any prior date. So in light of the above judgments the appellant has no prima facie case and as such the appellant filed the instant appeal with malafide and arbitrary intentions. Copies of the Departmental appeal and judgment of the Sindh High Court are attached as annexure **R2, R3.**

4. Incorrect and misconceived. That as stated above in Para No.3 that the said service Rules were properly notified in the official gazette on 2.11.2016, therefore the same will take effect from the date of issuance and not from any back date. Moreover the spirit of the above noted Notification has allowed the replying respondents to tendered their option regarding absorption/induction in the management cadre

and as such they have rightly been inducted in the management cadre by the competent authority vide Notification dated 7.5.2018. That under article 38(e) of the constitution of Pakistan 1973 the replying respondents have equal rights to get benefit from the Notification dated 2.11.2016 by way induction in the management cadre.

5. Incorrect and misconceived hence denied.
6. Incorrect and misconceived hence denied.
7. Incorrect and misconceived. That as explained in Para No.3 and 4 that the said Rules were properly Notified in the official gazette on 2.11.2016 and the replying respondents submitted their Departmental appeal for induction in the management cadre prior to the issuance of the said Notification were considered by the competent authority and were rightly been absorbed/inducted in the management cadre by issuing the Notification dated 7.5.2018.
8. Incorrect and misconceived hence denied.
9. Incorrect and misconceived. That in the Notifications dated 2.11.2016 and 10.5.2018 there is no mention regarding the stance taken by the appellant in this Para.
10. Incorrect and misconceived. That the mentioned case has no relevancy with the present appeal because every case has their own facts and circumstances and as such one case could not be dispose/decide on the basis of other case. Moreover the induction of the appellant in management cadre illegal because at the time of induction there were no rules in vogue for the management cadre and as such the induction of the appellant will take effect from issuance of the Notification dated 2.11.2016.
11. Incorrect and misconceived. That the subject Rules has been protected by section 26 of the Civil Servant Act, 1973 and as such the competent authority has issued the Notification dated 7.5.2018 regarding the induction/absorption of the replying respondents in the management cadre who is perfectly competent to issue the same.
12. Incorrect and misconceived. That in light of section-4 of the Civil servant Act, 1973 read with Rule -3 of the Civil Servant Appeal Rules, 1986 the appeal in hand is not maintainable and liable to be set aside.

It is therefore, most humbly prayed that on acceptance of this reply the appeal of the appellant may kindly be dismissed with cost.

PRIVATE RESPONDENTS NO.3 TO 90


Dr. Mohammad Saleem

&

87 others

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

MOBILE NO.0345-9383141

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 2nd NOVEMBER, 2016.

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE NWFP HEALTH DEPARTMENT

NOTIFICATION

Dated: 11th December, 2008.

No. SOH(EV)4-20/08: In exercise of the powers conferred by section 26 of the North West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE HEALTH (MANAGEMENT) SERVICE RULES, 2008.

PART - I GENERAL

1. Short title and commencement. --- (1) These rules may be called the North-West Frontier Province Health (Management) Service Rules, 2008. (2)

They shall come into force at once.

2. Definitions. --- In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say -

- (a) "appointing authority" in relation to a post, means the respective authority specified in para 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
- (b) "Commission" means the North-West Frontier Province Public Service Commission;
- (c) "Cadre" means Health Management Cadre;
- (d) "Government" means the Government of the North-West Frontier Province;
- (e) "Governor" means the Governor of the North-West Frontier Province;
- (f) "Initial recruitment" means appointment made otherwise than by promotion or transfer;
- (g) "Member of Service" means officer belonging to health management cadre as reflected in schedule I, II & III;

(h) "PHSA" means Provincial Health Services Academy;

ATTESTED

- (i) "Post" means a post specified in the Schedule-I of the rule and such other posts as may, from time to time, be determined by the Government;
- (j) "Schedule" means the schedule appended to these rules; and
- (k) "Service" means the North-West Frontier Province Health (Management) Service.

PART-II
RECRUITMENTS

3. **Number and nature of posts.**---The Service shall comprise the posts specified in the Schedule -I and such other posts as may be determined by Government from time to time.
4. **Method of Appointment.**---Method of appointment, qualifications and other conditions to applicable to a post in the Service shall be such as laid down in the column 3 to 5 of the Schedule - II.
5. **Syllabus and examination for appointment by initial recruitment.**--- Syllabus and standard for competitive examination for appointment by initial recruitment to the post in BS-17 shall be, as laid down in Schedule-III.

PART-III
CONDITIONS OF SERVICE

6. **Pre-Service Training & Departmental Examinations.**--- (1) On appointment to a post borne on the service in BS-17, every officer so appointed shall complete six months mandatory training including attachment as specified in schedule - IV.

(2) The training shall be followed by departmental examination to be conducted by Provincial Health Services Academy, which will be part of probation period.

7. **In-Service Training.**---Selection for in-service trainings which are linked with promotion shall be done on seniority basis and those at verge of promotion shall be given priority.

8. **Private Practice.**--- (1) No Member of Service shall be allowed private practice, in lieu he shall be entitled to non-practicing allowance, at such rate as may be prescribed by Government.

(.2) In case of default, the Member shall be liable to disciplinary action under the law.

9. **General rule.** --- In all matters not expressly provided for in these rules, Members of Service shall be governed by such rules as have been or may hereafter be prescribed by Government from time to time.

Provided that in case of a dispute the Government shall have the final authority to decide the matter in any manner it deems fit.

6

10. One time exercise. --- (1) Notwithstanding anything contained in the provision of these rules, Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning & Management or equivalent Master's Degree / Diploma in Health management or allied disciplines and opt for absorption;

Provided that the option once exercised shall be final.

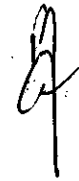
(2) Where the number of officers opting for absorption in Management Cadre is more than the available positions in respective grade, the selection under one time exercise shall be done on the basis of seniority-cum-merit only in the respective grade;

Provided that for determining the suitability of the officers, additional relevant qualifications, trainings/courses in the relevant field and managerial experience, as such, shall be taken into consideration.

11. Deletion of posts.---Posts reflected in the schedule-I shall stand deleted from any other service rules for the time being in force and such rules shall be deemed to have been amended to the above extent:

SECRETARY TO GOVERNMENT OF NWFP
HEALTH DEPARTMENT

ATTESTED



R1 - 7

SCHEDULE - I
(Management Cadre)

Members of Service in BPS-20:

S.No.	Nomenclature of post	Number of post
1	Director General Health Services, NWFP, Peshawar	01
2	Director (Admn) DGHS NWFP Peshawar	01
3	Director Health Services DGHS NWFP Peshawar	01
4	Medical Superintendent Govt. LRI/KTH/HMC Peshawar	03
5	Medical Superintendent DIIQ.Hospitals Kohat, Bannu, DIKhan, Mardan, Swat, Abbottabad	06
6	Medical Superintendent, Mufti Mehmood Memorial Hospital DIKhan	01
7	Medical Superintendent, Khalifa Gul Nawaz Hospital Bannu	01
8	Medical Superintendent, Govt. City Hospital Kohat Road Peshawar	01
9	Medical Superintendent, Sarhad Hospital for Psychiatric Diseases Peshawar	01
10	Medical Superintendent, Ayub Teaching Hospital Abbottabad	01
11	Executive District Officer (Health) Peshawar	01
12	Executive District Officer (Health) Swat	01
13	Executive District Officer (Health) Mardan	01
14	Executive District Officer (Health) Kohat	01
15	Director Provincial Health Services Academy, Peshawar	01
16	Principal Public Health School Hayatabad Peshawar	01
17	Principal Pubic Health School Abbottabad	01
18	MS Mardan Medical Complex	01
	TOTAL:	25

ATTESTED

[Signature]

SCHEDULE - I
(Management Cadre)

Members of Service in BPS-19:

S.No.	Nomenclature of post	Number of post
1.	Executive District Officers (Health) in NWFP	20
2.	DDHOs/Coordinators EDO(H) Offices in NWFP	31
3.	Medical Superintendent DHQ.Hospitals in NWFP	17
4.	Medical Superintendent Govt. ID Children Hospital Peshawar	01
5.	Medical Superintendent Police/Services Hospital Peshawar	01
6.	Medical Superintendent Mental & General Hospital Dadar Manshra	01
7.	Medical Superintendent, City Hospital Lakki Marwat	01
8.	DMS Women and Children Hospital DIKhan,	01
9.	DMS in DHQ. Hospital, Mardan, Swat, Nowshera, Haripur, Abbottabad and DIKhan	06
10.	District TB Control Officer, Peshawar, Mardan, Swabi, DIKhan, Haripur, Battagram, Manshra, Swat, Chitral, Upper Dir	10
11.	Deputy Administrator Mardan Medical Complex Mardan	01
12.	MS/Incharge Civil/THQ.Hospital Tangi, Shabqaddar, Dargai, Pabbi, Matta, Darosh (Chitral), Rehana, Kulachi	08
13.	SMO I/C Women & Children Hospital Bannu	01
14.	Vice Principal Paramedical Institute, Abbottabad, DIKhan, Swat	03
15.	SMO (Health) Municipal Corporation Peshawar	01
16.	Deputy Directors in DGHS NWFP Peshawar	05
17.	DMS (Stores) Govt. LRH/KTH Peshawar	02
18.	Principal Postgraduate Paramedical Institute Peshawar	01
19.	Deputy Director (HRD) PHSA NWFP	01
20.	Deputy Director(Monitoring and Research) PHSA NWFP	01
21.	Deputy Director(Management) PHSA NWFP Peshawar	01
22.	Course Directors (PH/CDC and Management, Trg.& Development) PHSA NWFP	02
23.	DD HRD / Vice Principals DHDC Bannu, Chitral, Mardan, Abbottabad and Swat	05
24.	DMS, Khalifa Gul Nawaz Hospital Bannu	01
25.	DMS Ayub Teaching Hospital Abbottabad	01
26.	Director Health Services FATA Peshawar	01
27.	MS AHQ Hospital Parachinar, Ghallanai, Wana, Bajaur	04
	TOTAL:	128

Note: All Program Manager/Provincial Coordinators of Vertical Programs/Projects & FATA Health positions would be filled from amongst

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SCHEDULE - I
(Management Cadre)

Members of Service in BPS-18:

S.No.	Nomenclature of post	Number of post
1.	Incharge Civil/THQ.Hospital Ziarat Kaka Sahib Nowshera, Rustam, Lund Khawar Mardan, Topi Swabi, Kalu Khan Swabi, Shakar Darra (Kohat), Thall Hangu, Serai Naurang Lakki Marwat, Balakot Mansehra and Thana Malakand Agency	10
2.	Senior Instructors DHDCs in NWFP (Abbottabad, Swat and DIKhan)	03
3.	Instructors in Public Health School, Hayatabad Peshawar and DIKhan	03
4.	Instructor Public Health School, Nishtarabad Peshawar	01
5.	Epidemiologist Govt. LRH and HMC Peshawar	02
6.	Course Director (MCH & Family Planning) PHSA NWFP	01
7.	Epidemiologist PHSA NWFP	01
8.	DMS Govt. Maternity Hospital Peshawar	01
9.	DMS (Admn) KTH Peshawar	01
10.	District TB Control Officer, Abbottabad, Kohistan, Nowshera, Charsadda, Malakand, Buner, Shangla, Lower Dir, Kohat, Hangu, Karak, Bannu, Lakki Marwat and Tank	14
11.	Deputy Director Admn./Deputy Director Dev.(02), Assistant Director EPI(02), DHS FATA	04
12.	Agency Surgeon Mohmand, Bajaur, Orakzai, Kurram, NW Agency, SW Agency, Khyber, FR Peshawar/ FR Kohat, FR DIKhan, FR Bannu,	10
13.	DMS(Admn), DMS(Stores) DMS (Dispensary) at Ayub Teaching Hospital Abbottabad	03
14.	Assistant Directors in Directorate General Health Services, NWFP, Peshawar	13
15.	ADHO FATA Health	4
	TOTAL:	71

Note: All Program /Project positions & FATA Health positions in BPS-18 would be filled from amongst Management Cadre.

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SCHEDULE – I
(Management Cadre)

Members of Service in BPS-17:

S.No.	Nomenclature of post	Number of post
1.	Health Educator Directorate General Health Services, NWFP Peshawar	01
2.	Assistant Director (Homeo & Tibb) AD Personnel, AD Administration Directorate General Health Services, NWFP, Peshawar	04
3.	MO Trainer DHDC (02 each) in Mardan, Kohat, Bannu, DIKhan, Abbottabad, Swat and Chitral	14
4.	Instructors in PHSA, NWFP	03
5.	Evaluation Officer PHSA, NWFP	01
6.	Instructors Public Health School, Hayatabad Peshawar and Abbottabad	03
7.	Secretary Medical Faculty, NWFP Peshawar	01
8.	DMS Maintenance HMC Peshawar	01
9.	DMS Stores HMC Peshawar	01
10.	DMS Casualty, OPD and OTs HMC Peshawar	01
11.	Coordinator EDO(H) Offices in NWFP	71
	TOTAL:	101

Note: All Program /Project positions in BPS-17 & FATA Health positions would be filled from amongst Management Cadre.

SCHEDULE - II

9

Nomenclature of Post.	Qualification for appointment by initial recruitment	Age limit	Method of Appointment
2	3	4	5
Director General Health Services (BS-20)			By transfer, on the basis of selection on merit, from amongst the ten senior most Members of the Service in (BS-20). Note: Preference will be given to those having additional postgraduate relevant qualifications or specialized courses.
Members of Service (BS-20)			(a) By promotion, on the basis of selection on merit, from amongst the Members of Service in (BS-19) with 5 years service as such or 17 years service in (BS-17) and above; and (b) Four months advance in-service training in Management from a recognized institution or PHSA NWFP.
Members of Service (BS-18)	(a) MBBS/BDS or equivalent qualification, from any institute recognized by the PMDC; and (b) (i) Doctorate / M.Phil in Public Health or Health Administration or Health Management or equivalent qualification from any University recognized by the H.E.C or PMDC; or (ii) Master in Public Health/Health Administration/ Health Management, allied discipline or equivalent qualification from any University recognized by H.E.C or PMDC with 5 years experience in the relevant field.	30-40 years	(i) Eighty percent by promotion, on the basis of seniority cum-fitness, from amongst Members of the Service in BS-17 having at least five years service as such, with two months in service training in Management from a recognized institution or PHSA; and (ii) Twenty percent by initial recruitment
Members of Service (BS-17)	(a) MBBS/BDS or equivalent medical qualification from any institute recognized by PMDC; and (b) Master in Public Health/Health Administration/ Health Management or equivalent qualification from any institute recognized by H.E.C or PMDC.	25-32 years	By initial recruitment.

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SCHEDULE - III**(HEALTH MANAGEMENT CADRE)****Syllabus and Standard for competitive exam for initial recruitment in BS-17**

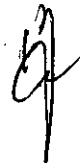
1. The Examination shall include General Compulsory and Specialized Compulsory Subjects, and every candidate will take all the compulsory subjects.
2. A candidate shall answer the papers in English unless otherwise directed. However, the paper in Islamiyat may be answered in Urdu or English.
3. The total marks of General Compulsory Subjects are 350 while there should be two Specialized Compulsory Papers of 300 marks each covering 150 marks.
4. Psychological aptitude test 50 Marks
5. Viva Voce 200 Marks
6. The general compulsory and specialized compulsory subjects and maximum marks fixed for each subject shall be as shown in the statement below:

General Compulsory Subjects (350 Marks)

Serial No.	Subjects	Maximum Marks
1.	English	100
2.	English Essay	50
3.	General Knowledge / Everyday science	50
4.	Current affairs	50
5.	Pakistan affairs	50
6.	Islamiyat	50

Specialized Compulsory Subjects (400 Marks)

1. Health Planning and Management (Single Paper)	200
Topics: Planning, Planning Cycle, Strategic Planning, Management, Project Management, Hospital Administration, Financial / Stock Management, Human Resource Management, Total Quality Management, Leadership, Decision Making, Organization, Effective Organization and Culture, Organizational Behavior, Human Factor and Motivation, Social Responsibility and Ethics, Management and Society (External Environment), Management of Training and HRD, Communication, Management Information System, etc.	

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**2. Epidemiology, Health System Research, Public Health and
Disease Control
(Single Paper)**

100

Topics:

Epidemiology, Research Methodology and Biostatistics, Health Systems, Surveillance and Disease Control, Monitoring & Evaluation, Infectious Diseases, Epidemiology and preventive methods, Reproductive Health, Occupational Health, Environmental Hazards and Sanitation, Nutrition with related disorders and prevention.

7. In case of non-Muslim, the paper of Pakistan Studies and Current Affairs will be each of 75 marks instead of Islamiyat.
8. No candidate will be called for Psychological Aptitude Test unless he has obtained 40% marks in individual subject with aggregate of 50%.
9. The passing marks in Psychological Aptitude Test are 40%. Those failed will not be called for the interview.
10. The passing marks for Viva Voce are 40%. The candidate failing in interview or remained absent will not be included in the merit.
11. The selection of selected candidates will be purely on merit as per Zonal Allocation Formula notified by the Establishment Department.
12. In case of a tie, the order of merit will be determined in accordance with the total number of combined marks achieved in Psychological Aptitude Test and interview. In case of tie in this case even, the decision will be on the basis of marks obtained in compulsory subjects. Even still if there is a tie, the order of merit will be on the basis of age.

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SCHEDULE IV

Induction training

Target Group:

The training is designed for newly recruited Medical Officers BS 17 in Health Management cadre .

Objective :

- To equip the doctors with Official Procedures , Financial & Procurement Rules and Regulations, Rules of Business, and other government functions with a view to benefit them for working as Health Managers.
- To develop their skill and knowledge in Planning, management and leadership.
- To develop skill and Knowledge regarding routine office procedures and management

Training Schedule :

The training is divided into two portions:

- Theory total duration 2 months
- Practical total duration 4 months

Theory:

To be imparted in PHSA in collaboration with STI, Audits and accounts training institute. NIMS. IMSciences etc.

Topics:

- ¼ Relationship of Management with Behaviour
- ¼ Principles of Management and planning
- ¼ Leadership
- ¼ Communication and advocacy
- ¼ Motivation.
- ¼ Team building
- ¼ Project management
- ¼ Donor coordination
- ¼ Health policies
- ¼ Human resource management
- ¼ Public private partnership.
- ¼ Decentralization.
- ¼ Use of information.
- ¼ Role of Provincial and district government in context of Local Government Ordinance.
- ¼ Medical ethics
- ¼ Healthcare financing
- ¼ Disease surveillance
- ¼ Basics of Epidemiology and epidemic control
- ¼ Monitoring and supervision
- ¼ Primary health care
- ¼ Hospital management
- ¼ Waste disposal
- ¼ Quality Management
- ¼ Vertical programmes and their linkages with in the health system.
- ¼ Health system research

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- ¾ Rules of business
- ¾ Auditing & Accounting
- ¾ General Financial rules
- ¾ Esta code etc.

Practical Training (Attachment): Duration 4 months

During this period the under trainee health managers will be attached with different sections and institutions of DOH to gain supervised Practical experience which will help in developing the needed skills.

Beak up of Practical Training is as follows :

- | | |
|---|---------|
| 1. Health Directorate including Vertical Programmes | 1 Month |
| 2. Health Secretariat | 1 Month |
| 3. EDO H Office | 1 Month |
| 4. Hospital | 1 Month |

The Time table and other details of the theory part as well as practical training will be developed by PHSA and to be approved by academic committee of PHSA and DOH.

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 10th May, 2018. ✓

GOVERNMENT OF KHYBER PALHTUNKHWA HEALTH DEPARTMENT

NOTIFICATION

Dated Peshawar, the 07th May, 2018.

No.SOH(E-V)4-20/2018 In pursuance of the Judgment dated 03.01.2012 of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.513 of 2010, upheld by the Honorable Supreme Court of Pakistan vide judgment dated 03.11.2016, in C.As No.320-324 of 2012 and CA No.126-P to 130-P of 2013, and in term of Section-10 of the Health Management Cadre Rules, 2008, the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to induct the following doctors of the General Cadre; on their option, into the Health Management Cadre having the requisite qualification.

2. Their inter se seniority will be determined in the new Cadre in terms of Section-8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rule-17 of the Appointment, Promotion Transfer Rules, 1989.

S.No	NAME OF DOCTOR	FATHER NAME
1.	Dr.Muhammad Saleem BS-19	Inayat-Ur-Rehman
2.	Dr.Muhammad Ismail BS-18	Said Muhammad
3.	Dr.Shahid Mehmood BS-18	Sardar Muhammad Aslam
4.	Dr.Muhammad Mustafa Alam BS-18	Nasrullah Jan
5.	Dr.Khalilur Rehman BS-18	Ali Rehman
6.	Dr.Muhammad Shuaib, BS-20	Muhammad Ajab
7.	Dr.Muhammad Munib BS-18	Sher Ali Khan
8.	Dr.S.Muhammad Taimur Shah BS-18	Pir Ferooz Shah
9.	Dr.Firdos Jabeen BS-18	Muhammad Aslam Khan
10.	Dr.Kalimullah Khan BS-19	Eid Gul.
11.	Dr.Niaz Muhammad BS-18	Dost Muhammad
12.	Dr.Zafr Ullah Khan BS-19	Ghulam Sarwar
13.	Dr.Saeed ur Rehman BS-18	Haji Fazli Rehman
14.	Dr.Aamir Israr BS-18	Irsar Muhammad Khan.
15.	Dr.S.Shaida Hussain Shah Bukhari BS-18	S. Fida Hussain Shah Bukhari
16.	Dr.Muhammad Shafiq BS-18	Akbar Gul
17.	Dr.Muhammad Rahim BS-19	Gul Rahim

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18.	Dr.Mushtaq Ahmad BS-18	Fazal Khan
19.	Dr.Shabnum Khawas BS-17	Lal Khawas Khan
20.	Dr.Ahmad Tariq BS-17	Tariq Tanveer
21.	Dr.Khan Askar BS-19	Muhammad Askar
22.	Dr.Faisal Malik BS-17	Fazli Malik Sarim
23.	Dr.Bilal Bahrawar Khan BS-17	Bahrawar Khan
24.	Dr.Tanveer Inam BS-17	Inamullah
25.	Dr.Muhammad Saleem Khan BS-19	Fazal Rahim Khan
26.	Dr.Alamgir Khan BS-18	Darwesh Khan
27.	Dr.Majid Khan BS-17	Muhammad Humayun Khan
28.	Dr.Ihsanullah BS-19	Ghulam Muhammad
29.	Dr.Aurangzeb Afridi BS-18	Ghulam Hussain Afridi
30.	Dr.Shafiul Mulk BS-19	Hazrat Mulk Khan
31.	Dr.Muhammad Khalil Akhtar BS-18	Muhammad Yousaf Khan
32.	Dr.Farhad Khan BS-19	Purdil Khan
33.	Dr.Muhammad Farid BS-17	Khaista Azam
34.	Dr.Aamir Rafiq Khattak BS-18	Muhammad Rafiq Khattak
35.	Dr.Jehanzeb Khan BS-19	Ihsanullah Khan
36.	Dr.Alif Jan BS-18	Amir Jan
37.	Dr.Makhdoom Safdar BS-17	Safdar Hussain Afghan
38.	Dr.Shumaila Malik BS-17	Malik Farid Khan
39.	Dr.Muhammad Kamal BS-18	Muhammad Sharif Khan
40.	Dr.Noor Saeed Khan BS-19	Muhammad Saeed Khan
41.	Dr.Aziz Khan BS-18	Jaffar Khan
42.	Dr.Ghulam Rasool Khan BS-19	Shadi Gul Khan
43.	Dr.Muhammad Iqbal Javed BS-20	Fatehullah Khan
44.	Dr.Kamran Zakria BS-18	Ghulam Zakria Khan
45.	Dr.Sheikh Muhammad Farooq Azam BS-18	Sheikh Muhammad Bashir Gohar
46.	Dr.Naimatullah Zia BS-19	Amir Shah
47.	Dr.Muhammad Israrul Haq BS-17	Abdur Rashid Khan
48.	Dr.Qasim Abbas BS-18	Saifur Rehman
49.	Dr.Muhammad Hayat BS-17	Haji Akbar Gul
50.	Dr.Muhammad Ibrahim Khan BS-18	Abdul Halim Khan
51.	Dr.Sheraz Ahmad Khan BS-17	Muhammad Akram Khan
52.	Dr.Adnan Khan BS-17	Muhammad Zahir Shah
53.	Dr.Syed Ijaz Ali Shah BS-18	Syed Abdul Qayum Shah
54.	Dr.Fazal Majeed BS-18	Muhammad Aslam
55.	Dr.Muhammad Bilal Khan BS-17	Muhammad Daud
56.	Dr.Majid Saleem BS-17	Allah Dad Khan
57.	Dr.Fazal Qayum BS-17	Abdur Rehman
58.	Dr.Ali Asghar Khan BS-18	Abdul Akbar Khan
59.	Dr.Muhammad Azhar Shah BS-17	Israr ul Arifin
60.	Dr.Saira Jabeen Shah BS-17	Amt Ali Shah
61.	Dr.Roshan Zada BS-18	Said Latif
62.	Dr.Javid Iqbal BS-19	Amir Bahadar
63.	Dr.Shaima Malik BS-17	Fazli Malik Sarim

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64.	Dr.Pirzada BS-17	Bahadar
65.	Dr.Shahab Ahmad BS-19	Abdur Rehman
66.	Dr.Muhammad Dost Khan BS-18	Zahir Gul
67.	Dr.Muhammad Riaz BS-18	Gohar Khan
68.	Dr.Kashmir Khan BS-19	Aslam Khan
69.	Dr.Tariq Hayat BS-17	Fazal Hayat Taj
70.	Dr.Muhammad Sohail Farooqi BS-17	Muhammad Aqeel Farooqi
71.	Dr.Abdul Waheed BS-19	Abdul Hameed
72.	Dr.Hafizullah Khan BS-17	Amanullah Khan
73.	Dr.Zakir Hussain BS-18	Hakim Khan
74.	Dr.Qazi Sabihuddin BS-19	Qazi Ghulam Mustafa
75.	Dr.Ijaz Ahmad BS-18	Bashir Ahmad
76.	Dr.Sher Muhammad BS-20	Shah Muhammad
77.	Dr.Wakeel Muhammad BS-20	Taj-ul-Malook
78.	Dr. Suffian Khan BS-17	Muhammad Tanveer
79.	Dr.Muhammad Naeem BS-18	Habibullah Khan
80.	Dr.Ikramullah BS-20	Amanullah Khan
81.	Dr.Muhammad Shoaib BS-18	Azizur Rehman
82.	Dr.Muhammad Riaz Tanoli BS-18	Said Ozar
83.	Dr.Inayatullah Khan BS-18	Saifullah Khan
84.	Dr.Wazir Khan BS-18	Rookam Khan
85.	Dr.Uzama Jabeen BS-18	Taj Muhammad
86.	Dr.Dildar Khan BS-18	Abdul Ghaffar
87.	Dr.Mohsin Ahmad BS-18	Taj Muhammad Khan
88.	Dr.Abbas Khan BS-18	Ajab Khan

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

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Printed and published by the Manager,
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R3- (15)

L.No. 21504
D. No. 30-11-2016
Secretary Health

Dated: 30 November 2016

To

The Secretary to Government of Khyber Pakhtunkhwa
Health Department, Peshawar

Advance Copy of the Application

Subject: Application for absorption in the Health Management Cadre under the North-West Frontier Province Health (Management) Service Rules published on 2nd November 2016

Sir,

With reference to the subject mentioned above and the notification of the Health department published in the government gazette on 2nd November 2016 regarding the North-West Frontier Province Health (Management) Service Rules (copy of the notification is enclosed); we are pleased to apply for the same under Rule-10(1) of the said rules despite of the fact that most of us have already applied under the earlier unpublished rules.

Sir, all of us are regular employees of the Health department, Govt of Khyber Pakhtunkhwa and have served at different management positions during our career. All of us are qualified, experienced and eligible professionals thus fulfilling all the prerequisites mentioned in the eligibility criteria of the said published notification.

Sir, in view of the above, it is requested that our application for the absorption in the management cadre may be given due consideration in the seniority list of the management cadre in accordance with the rules / inter se-seniority so that our names may be placed at the right place of the said list. We shall be very grateful for your kindness in this regard.

Yours Sincerely,

- 1) DR. SHEER MUHAMMAD S/O MR. SHAH MUHAMMAD,
BPS-19, DHO DISTRICT BUNER
- 2) DR. NAYYAR JAMAL S/O MR. YOUSAF JAMAL
BPS-17, ASSISTANT DIRECTOR, DGHS PESHAWAR
- 3) DR. KALIMULLAH S/O MR. EID GUL
BPS-18, ASSISTANT DIRECTOR, DGHS PESHAWAR
- 4) DR. MUHAMMAD SHOAIB KHAN S/O MR. AZIZ-UR-REHMAN
BPS-17, MEDICAL OFFICER, HEALTH DEPARTMENT
- 5) DR. MUHAMMAD FARID S/O MR. KHAISTA AZAM
BPS-17, MEDICAL OFFICER, HEALTH DEPARTMENT
- 6) DR. MUHAMMAD SALEEM S/O MR. INAYAT-UR-REHMAN
BPS-18, SENIOR MEDICAL OFFICER, HEALTH DEPARTMENT
- 7) DR. MUHAMMAD RAHIM KHATTAR S/O MR. GUL RAHIM
BPS-18, ASSISTANT DIRECTOR, DGHS PESHAWAR
- 8) DR. ZAHIR SHAH S/O MR. BAHADAR KHAN
BPS-18, DHO DISTRICT SWAT

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Attest

Kalimullah

Farid

Saleem

M. W. I.

Zahid

9) DR. SHAUKAT SALIM KHAN S/O SALIM KHAN
BPS-17, DTC DISTRICT SHANGGA

Shaukat

10) DR. WASEEM AHMED S/O QAZI MUHAMMAD SALEEM
BPS-18, SMO DHO HOSPITAL HARIPUR

Waseem

11) DR. SHAH FAISAL S/O DR. ROUNA ZAMAN
BPS-18, DPHO ABOOTTABAD

Shah

12) DR. SHAHNAZ KHAN S/O LAL KHAN
BPS-17, WMO - MOULVI AMER SHAH MEMORIAL HOSPITAL, PESHAWAR

Shahnaz

13) DR. KHAN ASKAR S/O MUHAMMAD ASKAR
BPS-18, SMO WOMEN & CHILDREN HOSPITAL, KHAT

Askar

14) DR. S.M. TAJMUR SHAH S/O PIR FERDOSH SHAH
BPS-17, ASSISTANT DIRECTOR, DGHs PESHAWAR

Tajmur

15) DR. MUHAMMAD USMAN SHAH S/O M. ZAHIR SHAH
BPS-17, EPI COORDINATOR, ABOOTTABAD

Usman

16) DR. SHAHID MEHMOOD S/O SARDAR MUHAMMAD ASLAM
BPS-17, DHTS COORDINATOR ABOOTTABAD

Shahid

17) DR. LAL BACHA S/O PIR ZAD GOL
BPS-17, EPI COORDINATOR BUNER

Bacha

18) DR. MUHAMMAD FARUQ S/O MUHAMMAD RAZIQ
BPS-17, LHTS COORDINATOR BUNER

Faruq

19) DR. FAISAL MALIK S/O FAZLI MALIK SARIM
BPS-17, MEDICAL OFFICER/DMS STORE, MOULVI JI HOSPITAL, PESHAWAR

Faisal

20) DR. NIHAZ MUHAMMAD S/O MUSTAFA MUHAMMAD
BPS-17, MEDICAL OFFICER/ADDITIONAL RMO LKH, PESHAWAR

Nihaz

21) DR. AURANGZEB AFRIDI S/O HAJI GHULAM HUSSAIN
BPS-17, MEDICAL OFFICER, POLICE HOSPITAL, PESHAWAR

Aurangzeb

22) DR. SHEKAR AHMAD S/O DR. RASHID AHMAD
BPS-17, MCO DHO SWAT

Shekar

23) DR. SAED ULLAH KHAN S/O MURAK MURAK KHAN
BPS-17, MCO SHIKH KHALIFA BIN ZAID HOSPITAL, SWAT

Saed

24) DR. KHALIL-UR-REHMAN S/O ALI REHMAN
BPS-17, COORDINATOR PUBLIC HEALTH HARIPUR

Khalil

25) DR. ZAKIUNNIN S/O AHSAANUL HAQ
BPS-17, LHTS COORDINATOR, BIR LOOPER

Zakunin

26) DR. SYED KAZIM BIN SHAH S/O SYED MIR ZAMAN SHAH
BPS-17, MCO DHO HOSPITAL, TANK

Kazim

27) DR. MUHAMMAD WAJIB ALI S/O M. ANAM
BPS-17, EPI COORDINATOR, SHANGGA

Wajib

28) DR. IHSANULLAH S/O GHOLAM MUHAMMAD
BPS-18, DPHO TANK

Ihsanullah

29) DR. MUSTAQ AHMED S/O FAZAL KHAN
BPS-17, DMS (ADMIN) MOULVI JI HOSPITAL, PESHAWAR

Mustaq

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[Handwritten mark]

- 46) DR. MOHAMMAD KHALIL AKHTER S/O MOHAMMAD YOUSAF
BPS-17, COORDINATOR HSRU HEALTH DEPARTMENT
- 39) DR. IJAZ AHMAD S/O BASHIR AHMAD
BPS-17, DEPUTY CHIEF HSRU HEALTH DEPARTMENT
- 38) DR. PIKAZADA S/O SAHADAR
BPS-17, MEDICAL OFFICER, DHO OFFICE, KHISTAN
[Handwritten signature]
- 37) DR. NIJAZ MOHAMMAD S/O KHALIL-UR-REHMAN
BPS-19, DHO SUAGI
[Handwritten signature]
- 36) DR. NADIR-UL-ISLAM S/O DURRANI KHAN
BPS-19, VICE PRINCIPAL DHO CHITRAL
[Handwritten signature]
- 35) DR. SHAIMA MALIK D/O DR. FAZLE MALIK SARIM
BPS-17, INSTRUCTOR, PUBLIC HEALTH SCHOOL HAYATABAD
[Handwritten signature]
- 34) DR. JAHANZEB KHAN S/O IHSANULLAH KHAN
BPS-18, DEPUTY PROGRAM MANAGER RBM
[Handwritten signature]
- 33) DR. NIJAZ ALI S/O NADAR KHAN
BPS-18, SMO, RHC PAID DHERI, MARDAN
[Handwritten signature]
- 32) DR. WAKEEL MUHAMMAD S/O JAI-UL-MALOOK
BPS-19, DHO MALAKAND
[Handwritten signature]
- 31) DR. MUHAMMAD AMIN S/O MIR AZAM KHAN
BPS-18, SMO, NICOLVI TI HOSPITAL PESHAWAR
[Handwritten signature]
- 30) DR. SHAFIQ MULK S/O HAZRAT MULK KHAN
BPS-18, DHO SHANGLA
[Handwritten signature]

(17)

(18)

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-4679 of 2016

Date	Order with signature of Judge
-------------	--------------------------------------

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Maalik Gaddi

Sohail Ahmed & others.....Petitioners

Vs.

Province of Sindh & others.....Respondents

**Dates of hearing: 17.10.2016, 24.10.2016, 10.11.2016
& 25.11.2016.**

M/s. Abid S. Zuberi, Ayan Mustafa Memon, Muhammad Saad Siddiqui, & Atta H. Khoso, Advocates for the Petitioners.

M/s. Abdul Jalil Zubedi and Abdul Jabbar Qureshi, A.A.G.

Mr. Ghulam Mustafa Memon, Registrar of this court along with Mr. Asif Majeed, Additional Registrar (Research) and Mr. Ashraf Memon, Addl. MIT-I.

.....

Muhammad Ali Mazhar-J: This petition has been brought to encounter the rejection of candidature of petitioners to take part in the competitive selection process for the appointment to the post of "Additional District and Sessions Judge".

2. The evanescent facts of this legal action are that the Sindh High Court Establishment invited applications for the appointment of "Additional District & Sessions Judge" on 10.6.2016 through publication in the newspapers and High Court Website. The petitioners being judicial officers governed under the provisions of Sindh Judicial Service Rules, 1994 after satisfying formal procedure applied for the post before the cutoff date i.e. 15.7.2016. The respondent No.2 issued provisional list of

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excess of jurisdiction nor in disregard of any law. Being judicial officers, the petitioners are not eligible to apply and participate in the Recruitment Process for the post of ADJ.

Judicial Precedents

(1) 1992 SCMR 1652 (Messrs Army Welfare Sugar Mills Ltd. & others vs. Federation of Pakistan & others). It seems to be well-settled proposition of law that a notification which purports to impair an existing or vested right or imposes a new liability or obligation, cannot operate retrospectively in the absence of legal sanction, but, the converse i.e. a notification which confers benefit cannot operate retrospectively, does not seem to be correct proposition of law.

(2) 2008 SCMR 1717 (Chief Administrator Auqaf vs. Mst. Amna Bibi). It has been laid down by the superior Courts that a notification which curtails or extends rights of citizens will take effect from date of its publication in Gazette and not from any prior date. Reference in this context can be made to the cases of Abdul Wajid and others v. Aftab Ahmad Khan, Deputy Registrar and others NLR 1992 CLJ 247 and Muhammad Suleman and others v. Abdul Ghani PLD 1978 SC 190 wherein it has been observed that word "notification" according to section 2(41) of the West Pakistan General Clauses Act (VI of 1956), shall mean a notification published under proper Authority in the official Gazette. Further reliance can be placed on case of Sh. Rahmatullah v. The Deputy Settlement Commissioner PLD 1963 SC 633 and Muhammad Ishaq v. Chief Administrator of Auqaf, Punjab PLD 1977 SC 639 wherein the Honourable Judges of the Supreme Court have laid down that the clause "within 30 days of such notification under section 7 of West Pakistan Waqf Properties Ordinance, 1961", would mean within 30 days time when notification was brought to the notice of general public by normal mode.

(3) 2008 SCMR 1148 (Government Of The Punjab, Food Department through Secretary Food and another Vs. Messrs United Sugar Mills Ltd. and another). West Pakistan Foodstuffs (Control) Act (XX of 1958).S.3(1). West Pakistan General Clauses Act (VI of 1956), S.2(41). Control, Notified order would mean notification through publication in official Gazette and not by passing an order and keeping same in office of department concerned. Notification not published in official Gazette would be invalid. Notified declaration could take effect from date of publication in Gazette and not from any prior date.

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(4) PLD 1978 Supreme Court 190 (Muhammad Suleman etc. vs. Abdul Ghani). Notifications which curtail or extend rights of the citizens, cannot be retrospective and this is all the more so in such cases when a state of things is to take place by publication of a notification which means from the date of its publication in the Gazette and not from any prior date or to be more precise, not from the date of the notification itself if it is prior to the actual date of the publication in the Gazette, because then it will tantamount to giving that notification a retrospective effect not from its publication but from a date prior thereto which as explained above is not permissible according to the relevant law.

(5) PLD 2011 Supreme Court 347 (Government of Sindh & others vs. Messrs Khan Ginners (Private) Limited & 57 others). The case of Muhammad Suleman and others v. Abdul Ghani PLD 1978 SC 190 throws sufficient light on the legal position that issuance of a Notification is not of any significance or legal importance till it is published in an official Gazette. According to section 2(41) of the General Clauses Act, 1956 a 'Notification' means a Notification published under proper authority in an official Gazette. In this view of the matter before its publication in the official Gazette the Notification relevant to the present appeals could not even be lawfully termed as a Notification. In these peculiar circumstances of this case we have not been able to take any legitimate exception to the declaration made by the learned Division Bench of the High Court of Sindh, Karachi that notices of demand issued against the respondents on 2-10-1998 were without lawful authority and of no legal effect.

(6) 1983 SCMR 785 (Muhammad Siddque vs. The Market Committee, Thandlianwala). Punjab Agricultural Produce Markets Act (V of 1939), S.27. Notification: On the 30th July, 1975 a notification No.SO(S&M)-X-53/72 was issued by the Provincial Government prohibiting the establishment of any market within the market area of any Market Committee unless the site for the same had been approved by the Provincial Government. This notification was published in the official Gazette on the 20th November, 1975. A plain reading of the section will make it clear that the condition of previous publication in the official Gazette is confined to bye-laws only and not to the rules or any notification issued thereunder. In the instant case the mere fact that the publication of notification was delayed until the 20th November, 1975 will not invalidate or otherwise make its operation retrospective from any date prior to the 30th July, 1975 when it was actually signed though not published in the official Gazette.

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(7) 2012 SCMR 455 (Dr. Akhtar Hassan Khan & others vs. Federation of Pakistan & others). Art. 184(3). Judicial review of Executive's authority. Scope and limitations. Once the competent authority in the government has taken a decision backed by law, it would not be in consonance with the well-established norms of judicial review to interfere in policy making domain of the executive authority. Grounds upon which an administrative action is subject to control by judicial review, includes, illegality, which means the decision-maker must understand the law correctly that regulates his decision-making power and must give effect to it. Not every wandering from the precise paths of best practice, lend fuel to a claim for judicial review.

(8) 1996 SCMR 1185 (Hameed Akhtar Niazi vs. The Secretary, Establishment Division, Government of Pakistan & others). Sections 8 and 23 of Civil Servants Act, 1973. Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG. In this case the apex court remanded the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

7. Heard the arguments. In the beginning, let us first converge that the learned counsel for the petitioner remained self-confined to the solitary vantage point that petitioners applied before the cutoff date so their applications could not be rejected due to the amendment notified on 26th July 2016 and published in the official gazette on 22.9.2016. However, he renounced and part with all other grounds raised in the memo of petition to challenge and or contest the legitimacy or lawfulness of the amendment made in the rules. So in all fairness, at this moment in time the amendment made by the Full Court is

ATTESTED



VAKALATNAMA

IN THE COURT OF KP Service Tribunal, Peshawar

8.30

OF 2018

Dr. Shams-ur-Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Dr. Muhammad Saleem & 87 others

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 21 / 12 / 2018

Saleem
DR. MUHAMMAD SALEEM (S#3)

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
ADVOCATES

OFFICE:



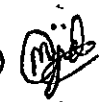







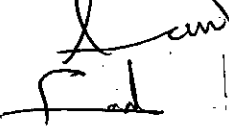

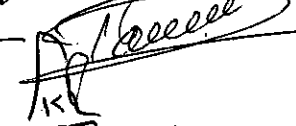

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Islamia Club Building, Khyber Bazar,
Peshawar City.

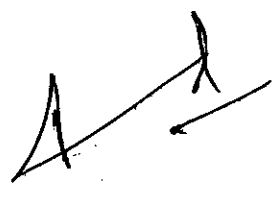
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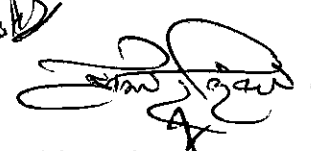
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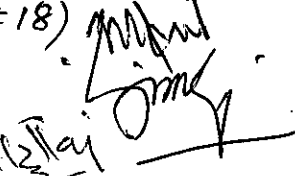
S. No

- 2) DR. NIAZ MUHAMMAD (S#13)
- 3) DR. M. RIAZ TANOLI (S#84)
- 4) DR. M. KHALIL AKHTER (S#33)
- 5) DR. MAJID KHAN (S#29)
- 6) DR. QASIM ABBAS (S#50)
- 7) DR. M. DOST KHAN (S#68)
- 8) DR. AMIR RAFIQ KHATTAK (S#36)
- 9) DR. MAKHOOM SAFDAR (S#39)
- 10) DR. MUHAMMAD MUNIB (S#9)
- 11) DR. AZIZ KHAN (S#43)
- 12) DR. AHMAD TARIQ (S#28)
- 13) DR. TANVEER INAM (S#26)
- 14) DR. QAZI SABIHUDDIN (S#76)
- 15) DR. MUHAMMAD FARID (S#35)
- 16) DR. KALIMULLAH KHAN (S#12)
- 17) DR. S.M. TAIMUR SHAH (S#10)
- 18) DR. KHALIL UR REHMAN (S#7)
- DR. PIRZADA (S#66)
- DR. SUFFIAN KHAN (S#80)
- DR. SHABNUM KHAWAS (S#21)
- SYED SHAIDA HUSSAIN S/O SYED FIDA AUSSAIN (S#17)
- KHAN ASKAR (S#23)
- FAZAL MAJEED (S#56)
- MUHAMMAD SHAFIQ (S#18)
- RAKIR HUSSAIN (S#75)
- RIQ HAYAT (S#71)
- RULLAH KHAN (S#14)
- D SALEEM (S#58)
- MAD KAMAL (S#41)
- MAD SOHAIL FAROOQI (S#72)
- MALIK (S#40)

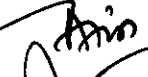















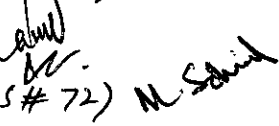














S.NO	NAME	SIGNATURE
33)	DR. HAFIZULLAH KHAN (S#74)	Hafizullah
34)	DR. INAYATULLAH KHAN (S#85)	Inayatullah
35)	DR. ABBAS KHAN (S#90)	Abbas Khan
36)	DR. ALAMGIR KHAN (S#28)	Mezlan
37)	DR. SHAHID MEHMOOD (S#05)	Shahid
38)	DR. MUSTAFA ALAM (S#06)	Mustafa
39)	DR. FARHAD KHAN (S#34)	Farhad
40)	DR. MOHSIN AHMAD (S#89)	Mohsin
41)	DR. SHAFIUL MULK (S#32)	Shafiq
42)	DR. SHIEKH MOHD FAROOQ AZAM (S#47)	Farooq Azam
43)	DR. IJAZ AHMAD (S#77)	Ijaz
44)	DR. MUHAMMAD SHOAIB (S#83)	Shoaib
45)	DR. MUHAMMAD ISMAIL (S#4)	Ismail
46)	DR. MUHAMMAD SHOAIB (S#8)	Shoaib
47)	DR. FIRDDOS JABEEN (S#11)	F. Jabeen
48)	DR. SAEED-UR-RAHMAN (S#15)	Saeed ur Rahman
49)	DR. AMIN ISYAR (S#16)	Amin
50)	DR. MOHAMMAD RAHIM (S#19)	Rahim
51)	DR. MUSHTAQ AHMAD (S#20)	Mushtaq
52)	DR. FAISAL MALIK (S#24)	Faisal
53)	DR. BILAL BAHRAWAR KHAN (S#25)	Bilal
54)	DR. MOHAMMAD SALEEM KHAN (S#27)	Saleem
55)	DR. IHSANULLAH (S#30)	Ihsan
56)	DR. AURANGZEB AFRIDI (S#31)	Aurangzeb
57)	DR. JAHANZEB KHAN (S#37)	Jahzeb
58)	DR. ALIF JAN (S#38)	Alif
59)	DR. NOOR SAEED KHAN (S#42)	Noor Saeed
60)	DR. GHULAM RASOOL KHAN (S#44)	Ghulam Rasool
61)	DR. MUHAMMAD IQBAL JAVED (S#45)	Iqbal Javed
62)	DR. KAMRAN ZAKRIA (S#46)	Kamran
63)	DR. NAIMAT ULLAH ZIA (S#48)	Naimat Ullah
64)	DR. MUHAMMAD ISRAR UL HAQ (S#49)	Israr ul Haq
65)	DR. MOHAMMAD HAYAT (S#51)	Hayat
66)	DR. MUHAMMAD IBRAHIM KHAN (S#52)	Muhammad Ibrahim
67)	DR. SHERAZ AHMAD KHAN (S#53)	Sheraz
68)	DR. ADNAN KHAN (S#54)	Adnan

S. NO

NAME

SIGNATURE

- 69) DR. SYED IJAZ ALI SHAH (S# 55) Ijaz
- 70) DR. MUHAMMAD BILAL KHAN (S# 57) Bilal Khan
- 71) DR. FAZAL QAYUM (S# 59) Fazal
- 72) DR. ALI ASGHAR KHAN (S# 60) Ali Asghar
- 73) DR. MUHAMMAD AZHAR SHAH (S# 61) Azhar
- 74) DR. SAIRA JABEEN SHAH (S# 62) Saira Jabeen
- 75) DR. ROSHAN ZADA (S# 63) Roshan
- 76) DR. JAVID IQBAL (S# 64) Javid
- 77) DR. SHAIMA MALIK (S# 65) Shaima
- 78) DR. SHAHAB AHMAD (S# 67) Shahab
- 79) DR. MUHAMMAD RIAZ (S# 69) Riaz
- 80) DR. KASHMIR KHAN (S# 70) Kashmir
- 81) DR. ABDUL WAHEED (S# 73) Waheed
- 82) DR. SHER MUHAMMAD (S# 78) Sher
- 83) DR. WAKEEL MUHAMMAD (S# 79) Wakeel
- 84) DR. MUHAMMAD NAEEM (S# 81) Naeem
- 85) DR. IKRAMULLAH (S# 82) Ikramullah
- 86) DR. WAZIR KHAN (S# 86) Wazir
- 87) DR. UZMA JABEEN (S# 87) Uzma
- 88) DR. DILDAR KHAN (S# 88) Dildar

To

The Chairman

Khyber Pakhtunkhwa Public Service Commission.

Sir,

With due respect it is stated that as
appealed in person to your lordship,
please enquire into the Case No. 830/18
Dr. Shamsur Rehman (4) which was fixed
for today i.e. on 14/12/2018; but unfortunately
has been rescheduled to 18/12/2018 with
manual correction/overwriting in the register.
Furthermore the same practice is continued
previously from six months; since the
inception of case.

Looking forward for your kind action.

Yours Sincerely,

Dr. Irfan Ali Shah

Appellant in the same case

To, 4

The Chairman,

Khyber Pakhtunkhwa Services Tribunal

Part of to the

Sir,

Case of Ayaz
Azizul Haq Donkhar
17/10/18

With due respect it is stated we the doctors Recd
of Health Management Cadre Health Department
Khyber Pakhtunkhwa has submitted ten (10) service
appeals - No. 830-839/18 regarding unlawful
and illegal induction of doctors of general
cadre into Management Cadre.

Sir since the inception of the case, Health
Department being the respondents in the case,
instead of submitting response to this August
tribunal are playing delaying tactics. In the
meanwhile Health Department is facilitating
the general cadre doctors who are respondents
in the case by posting them to Management
cadre case and now also appointing them
for mandatory promotional trainings.

Sir it is my painful duty to highlight

that the staff of the August Seizures Tribunal
are not facilitating us, and ^{deliberately} intentionally
giving us dates which ~~are~~ is generally
two months time frame. Sir we have time
and again submitted appeals for early hearing
and in the last hearing which took place
on 28.09.2018, the honorable chairman
assured us that next hearing will be on
18.10.2018. But astonishingly the date
of case now is being fixed for 14.11.2018.

Sir it is respectfully submitted that
the case may be heard on the same
18.10.2018, to secure the ends of
Justice and so that deserving doctors
may not suffer anymore by delaying
factors of opponents.

Regards
Dr. Syed Erfan Ali Shah
Dr. Shams. 830-39/18

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

In-Service Appeal No: _____ / 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1006

Dated 17-9-18

Dr. Shams Ur Rehman

Versus

Government of KP & Others

APPLICATION FOR GRANT OF RESTRAINING ORDER AGAINST
RESPONDENT No. 1 & 2 AND FOR SUSPENSION OF IMPUGNED
NOTIFICATIONS, AS AN INTERIM RELIEF

Respectfully Sheweth,

1. That the captioned appeal is pending adjudication before the honble tribunal, and is fixed for today
2. That the appellant through the instant appeal has challenged Notification No. SOH(E-V)4-20/2018 dated 07.05.2018 so as to declare the absorption of respondent No. 3-90 as illegal and *ultra vires* and declaration to the effect that Notification No. SOH(E-V) 4-20/2017 dated 10.05.2017 is illegal to the constitution of Islamic Republic of Pakistan, 1973.
3. That inspite of the pendency of the appeal, the respondent No. 1 & 2 are making further orders of absorption/induction .
4. That at the moment the absorption/induction process requires to be stayed so as to avoid multiplicity of litigation.

Put up to the court
with relevant appeal.

[Signature]

17/9/18


Reader

5. That the captioned appeal has already been admitted and is fixed for final hearing.
6. That the applicant/appellant has got prima facie case in his favour.
7. That balance of convenience leans in favour of the applicant/appellant.
8. That if the impugned notifications are not suspended the applicant/appellant will suffer irreparable loss.

It is therefore requested that on acceptance of instant application the impugned notifications may kindly be suspended and the respondents No. 1 & 2 be restrained from making any further absorption/induction orders in the Management Cadre of Health Services (Management) till the final disposal of the instant appeal.

Applicant/Appellant,

Through


QAZI JAWAD EHSANULLAH
Advocate Supreme Court of Pakistan

AFFIDAVIT

Declared on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this hon'ble Tribunal




Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 754 /ST

Dated 12-4- /2019


To,

1. The Secretary,
Health Department,
Govt of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN APPEAL NO. 830/2018, DR. SHAMS-UR-RAHMAN & (9) OTHERS
VS GOVT.

I am directed to forward herewith a certified copy of Order/Judgment dated
22.03.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

Sr. No
Date of order/ proceedings

1

2

Order or other proceedings with signature of Judge or Magistrate

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 482/2016

Date of Institution ... 06.05.2016

Date of Decision ... 12.01.2018

Dr. Muhammad Saleem, R/o House No.19, Sethi Town No.1 Haji Camp, Peshawar. **Appellant**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar.
4. Director General Health Services, Khyber Pakhtunkhwa Peshawar. **Respondents**

12.01.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

counsel for the appellant and Mr. Riaz Paindakheil, Learned Assistant Advocate General on behalf of the respondents present.

2. Appellant has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and made impugned therein the order dated 11.04.2016 whereby the departmental appeal of the appellant for his induction in Health Management Cadre in BS-18 was regretted.

3. Learned counsel for the appellant argued that the appellant was appointed as Medical Officer in BS-17 in the year 1999 in General Cadre and timely opted to be absorbed in the Health Management Cadre but his name as not included in the Health Management Cadre

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Peshawar

and in the tentative seniority list of BS-17 of the Health Management Cadre as stood on dated 01.01.2012. the name of the appellant was not shown, resultantly the appellant filed Writ Petition bearing No.3645/2012 before the Hon'ble Peshawar High Court Peshawar with the prayer that the appellant may be absorbed in the Health Management Cadre in BS-17. Further argued that the Writ Petition was disposed of in the following terms

"Petitioner has filed this Constitutional petition with the following prayer:- On acceptance of this Writ Petition, petitioner may please be absorbed/included in the "tentative Seniority list of members of service (BPS-17) of the Health Management Care as stood on 01.01.2012" in the best interest of justice. After arguing the case at some length, learned AAG along with D.G. Health Services Government of Khyber Pakhtunkhwa, Peshawar stated at the bar that they are going to accommodate the petitioner in Management Cadre, provided he would not claim seniority in the new Cadre, which offer is candidly accepted by the petitioner and his learned counsel as well. In this view of the matter, this Writ Petition is disposed of in the above terms".

Further argued that against the judgment passed in writ petition the appellant filed Review Petition No.42-P/2014 wherein the appellant sought review of the said judgment to the extent of challenging his right of inter-se-seniority amongst his colleagues before the proper forum, which review petition was allowed. Further argued that the

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respondent department instead of inducting the appellant in Health Management Cadre in BS-18 issued order/letter dated 01.09.2015 and thereby gave option to the appellant either to join Health Management Cadre in BS-17 as per judgment of the Peshawar High Court or continue working in General Cadre in BS-18 as per his recent promotion. Further argued that on the refusal of the respondent department to induct the appellant in Health Management Cadre in BS-18 and against the order/letter dated 01.09.2015 mentioned above the appellant filed COC bearing No.386-P/2015 in Writ Petition and Review Petition mentioned above, which was disposed of with the permission to the appellant to approach the proper forum for challenging his inter-se-seniority amongst his colleagues. Further argued that thereafter the appellant filed departmental appeal for his induction in Health Management Cadre in BS-18, which departmental appeal was regretted vide order dated 11.04.2016, hence the appellant filed the present service appeal. Further argued that by offering option to the appellant to be absorbed in the Health Management Cadre in BS-17 the respondent department has not treated the appellant in accordance with law. Further argued that it is vested legal right of the appellant to be absorbed in the Health Management Cadre in BS-18 as his colleagues have been serving in Health Management Cadre in BS-18. Further argued that the treatment meted out to the appellant is discriminatory and against the principles of natural justice. Learned counsel for the appellant stressed that the appellant is entitled to be inducted in the Health Management Cadre in the same scale (BS-18) in

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which his colleagues are already serving.

4. As against that learned Assistant Advocate General argued that the appellant has not submitted timely option for his induction in Health Management Cadre at the proper stage but somehow succeeded in keeping the photocopy of fake document in the file and made himself guilty of forgery, misconduct and attempted to deceive the court. Further argued that the appellant has been challenging the order of one court in the other. Further argued that the respondent department has complied with the judgment dated 20.02.014 of the Peshawar High Court Peshawar but the appellant himself flouted the same and did not join the Health Management Cadre in BS-17. Further argued that the prayer of the appellant in the present service appeal is contrary to the prayer of the appellant in his Writ Petition as well as the dicta of judgment dated 20.02.2014 passed in Writ Petition.

5. Arguments heard. File perused.

6. It may be mentioned that allegedly the appellant filed the representation dated 29 November 2011 wherein he averred that he was serving as Medical Officer in BS-17 and was on deputation with JICA w.e.f 01.03.2008 to 31.08.2011 and he submitted application dated 18.03.2009 for inclusion of his name in Health Management Cadre. On the other hand the appellant has preferred the present service appeal on 06.05.2016 for his induction in Health Management Cadre and that too in BS-18, as such the present service appeal is hopelessly time barred.

7. Astonishingly instead of joining the Health Management Cadre

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 Peshawar

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in BS-17 on the strength of judgment dated 20.02.2014 of Peshawar High Court Peshawar in Writ Petition No.3645/2012, the appellant accepted his promotion in BS-18 in the General Cadre, made vide promotion order dated 06.04.2015.

8. By virtue of judgment dated 20.02.2014 passed in the Writ Petition mentioned above the appellant earned his right to be absorbed in Health Management Cadre in BS-17. Similarly on the strength of the judgment passed in review petition No.3645/2012 the appellant was also allowed to challenge inter-se-seniority amongst his colleague in the proper forum.

9. Perusal of the judgment passed in COC No386-P/2015 would show that the respondent department had implemented the judgment dated 20.02.2014 of the Peshawar High Court and included the name of the appellant in the Health Management Cadre in BS-17 vide letter dated 31.03.2015 and from the perusal of record and arguments of the learned counsel for the parties it transpired that it was the appellant who did not honor the judgment of Peshawar High Court Peshawar dated 20.02.2014 and shied away to join the Health Management Cadre in BS-17 rather accepted his promotion in BS-18 in General Cadre.

10. Had the appellant joined the Health Management Cadre in BS-17 in compliance of the judgment dated 20.02.2014 of Peshawar High Court, he could have availed the remedy of challenging the inter-se-seniority amongst his colleagues serving in the Health Management Cadre on the basis of judgment of Peshawar High Court passed in

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review petition No.3645/2012.

11. Through this service appeal for induction in Health Management Cadre in BS-18, the appellant indeed seeks supersession of the judgment dated 20.02.2014 of Peshawar High Court Peshawar to the effect of absorbing the appellant in Health Management Cadre in BS

17. Rule 23 of Khyber Pakhtunkhwa Service Tribunal's Rules 1974 specifically debars this Tribunal from entertaining any appeal in which the matter directly and substantially in issue has already been finally decided by a court or a Tribunal of competent jurisdiction.

12. It may also be observed that since the appellant instead of joining the Health Management Cadre in BS-17 opted to accept promotion in BS-18 in General Cadre made vide promotion order dated 06.04.2015, hence the respondent department vide order/letter dated 01.09.2015 in

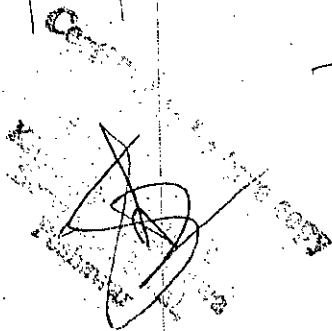
the interest of the appellant asked him about his option either to join Health Management Cadre in BS-17 or the General Cadre in BS-18.

13. In the light of above discussion the present appeal found utterly frivolous and devoid of any substance, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Announced self - M. Hamid Mughal

12-01-2018

self



2015 S C M R 1060

[Supreme Court of Pakistan]

Present: Nasir-ul-Mulk, C.J., Amir Hani Muslim and Ijaz Ahmed Chaudhry, JJ

SARHAD DEVELOPMENT AUTHORITY through Chairman---Petitioner

versus

Syed MUHAMMAD LATIF SHAH and others---Respondents

Civil Petition No. 84-P of 2015, decided on 25th March, 2015.

(On appeal from judgment dated 22-1-2015 of the Peshawar High Court, Peshawar, passed in W.P. No. 3258 of 2013)

Sarhad Development Authority Act (XI of 1973)---

----S. 29---Constitution of Pakistan, Art. 185(3)---Non-framing of rules---Service matter---High Court, in exercise of constitutional jurisdiction, struck down notification of promotion of employee against the post of General Manager (Administration) in Basic Scale 19---Validity---Government was required to frame rules pertaining to terms and conditions of services of officers and employees of Sarhad Development Authority---Such omission, prima facie, showed that government, in absence of proposed rules, was regulating service of the Authority by exercising its unstructured discretion in recruitment/ promotion of officers and employees in the Authority--- Supreme Court directed the government of Khyber Pakhtunkhwa to comply with provisions of S. 29 of Sarhad Development Authority Act, 1973--- Supreme Court declined to interfere in judgment passed by High Court as the same would perpetuate injustice---Petition for leave to appeal was dismissed in circumstances.

Muhammad Ijaz Sabi, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 25th March, 2015.

JUDGMENT

AMIR HANI MUSLIM, J.---This Petition for leave to Appeal is directed against judgment dated 22-1-2015, passed by the Peshawar High Court, Peshawar, whereby Writ Petition filed by the respondent No.1 was allowed and the Notification of Promotion of the respondent No.9 was struck down.

2. The facts necessary for decision of the present Petition are that the respondent No.1 filed Writ Petition before the Peshawar High Court, praying therein to set aside the Notification of Promotion of the respondent No.9 against the Post of General Manager (Administration) (BS-19) being violative of the Sarhad Development Authority (Appointment of Employees) Rules, 1977 framed under the Sarhad Development Authority Act 1973. The respondent No.1 pleaded in the Writ Petition that he

was the senior most BS-18 officer of Managerial Cadre in the Sarhad Development Authority (hereinafter referred to as the Authority) and Promotion of the respondent No.9, who belongs to the Finance Cadre, was against the said Rules. At the relevant time the respondent No.1 was working as Industrial Estate Manager (BPS-18) in the Managerial Cadre in the Export Processing Zone Risalpur and was posted against the post of General Manager (Administration) Sarhad Development Authority, keeping in view his seniority in the Managerial Cadre. However, the Departmental Promotion Committee in its meeting recommended the respondent No.9 for promotion to the post of General Manager (Administration), Accordingly the notification for promotion of the respondent No.9 was issued in compliance with the minutes of the meeting of the Departmental Promotion Committee.

3. Feeling aggrieved, the respondent No.1 filed departmental Review Petition against the order of the Departmental Promotion Committee, which was turned down by the Competent Authority, by order dated 2-11-2013. Therefore, he filed Writ Petition before the Peshawar High Court, which was allowed as stated above. Hence this Petition for leave to Appeal.

4. The learned counsel for the petitioner has contended that the learned High Court has wrongly entertained the Writ Petition filed by the respondent No.1, as the Sarhad Development Authority (Appointment of Employees) Rules, 1977 are non-statutory in nature and the Employees of the Sarhad Development Authority are governed by the principle of Master and Servant. He next contended that the Sarhad Development Authority (Appointment of Employees) Rules, 1977, were not notified as required by section 29 of the Sarhad Development Authority Act, 1973, therefore, the High Court has no jurisdiction to adjudicate upon the service matters of the employees of the Authority.

5. He further contended that the respondent No.9 is the senior-most BS-18 officer of the Sarhad Development Authority and the Departmental Promotion Committee has rightly recommended his name for promotion to the post of General Manager (Administration) (BS-19) which is to be filled in by promoting the senior most officer of BS-18 of the Authority.

6. We have heard the learned counsel for the petitioner and have perused the record. The petitioner-Authority is created by Sarhad Development Authority, N.-W.F.P Act No.XI of 1973, promulgated on 12-1-1973. Section 29 of the Act provides:-

"(29) (1) Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generally of the foregoing powers, such rules may provide for --

- (a) the manner of keeping accounts of the Authority and the companies managed by it;
- (b) the recruitment of officers, advisers and employees of the Authority;
- (c) the terms and conditions of service of the officers, advisers and employees of the Authority, including the functions of the advisers;
- (d) the borrowing by the Authority;
- (e) the purchase and sale of goods by the Authority;

- (f) the date by which and the form in which, the annual budget statement shall be submitted in each year;
- (g) the procedure for appropriation and re-appropriation of moneys returns, at the credit of the Authority;
- (h) the form and manner in which and the authorities to whom returns, reports or statements shall be submitted; and
- (i) such other matters relating to the administration of the affairs of the Authority as Government may think fit to regulate by rules;

7. From 1973 till date, the Government of KPK has failed to frame Rules in terms of section 29 of the Act inclusive of the Rules for recruitment of the Officers, Advisors and employees of the Authority. The Government was further required to frame Rules pertaining to the terms and conditions of services of the officers and employees of the Authority. This omission, prima facie, shows that the Government, in absence of the proposed Rules, is regulating the service of the petitioner-Authority by exercising its unstructured discretion in recruitment/ promotion of officers and employees in the Authority. We, therefore, direct the Government of KPK to comply with the provisions of section 29 of the Act within three months from the date of this judgment and submit compliance report to the Registrar of this Court for our perusal in Chambers.

8. The petitioner-Authority is bound by its own Rules which categorize different Cadres in the service of the Authority. In the case in hand, the exercise of jurisdiction by the High Court is immaterial, as the officer who is aggrieved by the impugned judgment has not challenged it before this Court. The grant of leave by this Court under Article 185(3) of the Constitution is discretionary. By the impugned judgment, the learned High Court has resolved the issue of promotion between the two individuals which has no bearing over the petitioner-Authority. It is the aggrieved officer who could have approached this Court. The petitioner-Authority has no locus standi to invoke the jurisdiction of this court and is bound by its own Rules, which permit the respondent No.1 to be promoted under its rules as has been determined by the learned High Court.

9. In the peculiar facts and circumstances of the case, we are of the view that our interference in the impugned judgment would perpetuate injustice and, therefore, we are not inclined to intervene. For the aforesaid reasons, this Petition being misconceived is accordingly dismissed and leave declined. A copy of this judgment be sent to the Chief Secretary and Advocate-General, KPK, for the information and compliance of the direction contained in para 7 above of the judgment.

MH/S-9/SC

Petition dismissed.

2015 S C M R 1060

[Supreme Court of Pakistan]

Present: Nasir-ul-Mulk, C.J., Amir Hani Muslim and Ijaz Ahmed Chaudhry, JJ

SARHAD DEVELOPMENT AUTHORITY through Chairman---Petitioner

versus

Syed MUHAMMAD LATIF SHAH and others---Respondents

Civil Petition No. 84-P of 2015, decided on 25th March, 2015.

(On appeal from judgment dated 22-1-2015 of the Peshawar High Court, Peshawar, passed in W.P. No. 3258 of 2013)

Sarhad Development Authority Act (XI of 1973)---

---S. 29---Constitution of Pakistan, Art. 185(3)---Non-framing of rules---Service matter---High Court, in exercise of constitutional jurisdiction, struck down notification of promotion of employee against the post of General Manager (Administration) in Basic Scale 19---Validity---Government was required to frame rules pertaining to terms and conditions of services of officers and employees of Sarhad Development Authority---Such omission, prima facie, showed that government, in absence of proposed rules, was regulating service of the Authority by exercising its unstructured discretion in recruitment/ promotion of officers and employees in the Authority--- Supreme Court directed the government of Khyber Pakhtunkhawa to comply with provisions of S. 29 of Sarhad Development Authority Act, 1973--- Supreme Court declined to interfere in judgment passed by High Court as the same would perpetuate injustice---Petition for leave to appeal was dismissed in circumstances.

Muhammad Ijaz Sabi, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 25th March, 2015.

JUDGMENT

AMIR HANI MUSLIM, J.---This Petition for leave to Appeal is directed against judgment dated 22-1-2015, passed by the Peshawar High Court, Peshawar, whereby Writ Petition filed by the respondent No.1 was allowed and the Notification of Promotion of the respondent No.9 was struck down.

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was the senior most BS-18 officer of Managerial Cadre in the Sarhad Development Authority (hereinafter referred to as the Authority) and Promotion of the respondent No.9, who belongs to the Finance Cadre, was against the said Rules. At the relevant time the respondent No.1 was working as Industrial Estate Manager (BPS-18) in the Managerial Cadre in the Export Processing Zone Risalpur and was posted against the post of General Manager (Administration) Sarhad Development Authority, keeping in view his seniority in the Managerial Cadre. However, the Departmental Promotion Committee in its meeting recommended the respondent No.9 for promotion to the post of General Manager (Administration), Accordingly the notification for promotion of the respondent No.9 was issued in compliance with the minutes of the meeting of the Departmental Promotion Committee.

3. Feeling aggrieved, the respondent No.1 filed departmental Review Petition against the order of the Departmental Promotion Committee, which was turned down by the Competent Authority, by order dated 2-11-2013. Therefore, he filed Writ Petition before the Peshawar High Court, which was allowed as stated above. Hence this Petition for leave to Appeal.

4. The learned counsel for the petitioner has contended that the learned High Court has wrongly entertained the Writ Petition filed by the respondent No.1, as the Sarhad Development Authority (Appointment of Employees) Rules, 1977 are non-statutory in nature and the Employees of the Sarhad Development Authority are governed by the principle of Master and Servant. He next contended that the Sarhad Development Authority (Appointment of Employees) Rules, 1977, were not notified as required by section 29 of the Sarhad Development Authority Act, 1973, therefore, the High Court has no jurisdiction to adjudicate upon the service matters of the employees of the Authority.

5. He further contended that the respondent No.9 is the senior-most BS-18 officer of the Sarhad Development Authority and the Departmental Promotion Committee has rightly recommended his name for promotion to the post of General Manager (Administration) (BS-19) which is to be filled in by promoting the senior most officer of BS-18 of the Authority.

6. We have heard the learned counsel for the petitioner and have perused the record. The petitioner-Authority is created by Sarhad Development Authority, N.-W.F.P Act No.XI of 1973, promulgated on 12-1-1973. Section 29 of the Act provides:-

"(29) (1) Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generally of the foregoing powers, such rules may provide for --

- (a) the manner of keeping accounts of the Authority and the companies managed by it;
- (b) the recruitment of officers, advisers and employees of the Authority;
- (c) the terms and conditions of service of the officers, advisers and employees of the Authority, including the functions of the advisers;
- (d) the borrowing by the Authority;
- (e) the purchase and sale of goods by the Authority;

- (f) the date by which and the form in which, the annual budget statement shall be submitted in each year;
- (g) the procedure for appropriation and re-appropriation of moneys returns, at the credit of the Authority;
- (h) the form and manner in which and the authorities to whom returns, reports or statements shall be submitted; and
- (i) such other matters relating to the administration of the affairs of the Authority as Government may think fit to regulate by rules;

7. From 1973 till date, the Government of KPK has failed to frame Rules in terms of section 29 of the Act inclusive of the Rules for recruitment of the Officers, Advisors and employees of the Authority. The Government was further required to frame Rules pertaining to the terms and conditions of services of the officers and employees of the Authority. This omission, prima facie, shows that the Government, in absence of the proposed Rules, is regulating the service of the petitioner-Authority by exercising its unstructured discretion in recruitment/ promotion of officers and employees in the Authority. We, therefore, direct the Government of KPK to comply with the provisions of section 29 of the Act within three months from the date of this judgment and submit compliance report to the Registrar of this Court for our perusal in Chambers.

8. The petitioner-Authority is bound by its own Rules which categorize different Cadres in the service of the Authority. In the case in hand, the exercise of jurisdiction by the High Court is immaterial, as the officer who is aggrieved by the impugned judgment has not challenged it before this Court. The grant of leave by this Court under Article 185(3) of the Constitution is discretionary. By the impugned judgment, the learned High Court has resolved the issue of promotion between the two individuals which has no bearing over the petitioner-Authority. It is the aggrieved officer who could have approached this Court. The petitioner-Authority has no locus standi to invoke the jurisdiction of this court and is bound by its own Rules, which permit the respondent No.1 to be promoted under its rules as has been determined by the learned High Court.

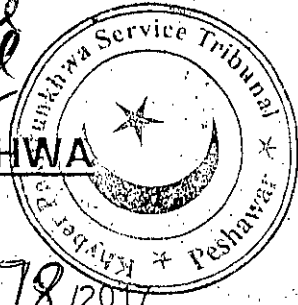
9. In the peculiar facts and circumstances of the case, we are of the view that our interference in the impugned judgment would perpetuate injustice and, therefore, we are not inclined to intervene. For the aforesaid reasons, this Petition being misconceived is accordingly dismissed and leave declined. A copy of this judgment be sent to the Chief Secretary and Advocate-General, KPK, for the information and compliance of the direction contained in para 7 above of the judgment.

MH/S-9/SC

Petition dismissed.

Joint DA

Joint Departmental Appeal



**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 578/2017

Asif Mir S/o Abdul Qayyum, Account Supervisor, District Program Implementation Unit (DPIU) of Lady Health Workers Program, Khyber Pakhtunkhwa, District Abbottabad.

...APPELLANT

V E R S U S

- ✓ 1) Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar.
- ✓ 2) Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- ✓ 3) Provincial Coordinator of Program for Family Planning and Primary Health Care (Provincial Program Implementation Units) of Lady Health Workers Program, Khyber Pakhtunkhwa, Peshawar.
- 4) District Health Officer, Abbottabad.

...RESPONDENTS

SERVICE APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, SEEKING DECLARATION TO THE EFFECT THAT APPELLANT IS ENTITLED TO DRAW THE PAY AND ALLOWANCES ADMISSIBLE TO THE POST OF "PROCUREMENT AND ASSISTANT LOGISTICS OFFICER" BPS-16 SINCE ASSIGNMENT OF DUTIES OF THE SAID POST TILL DATE ALONGWITH INCREMENTS AND UPGRADATION OF APPELLANT INITIALLY FROM ACCOUNT SUPERVISOR BPS-7 TO DISTRICT OFFICE ASSISTANT BPS-14 IN LINE WITH UPGRADATION OF THEIR COUNTERPARTS VIDE

Re-submitted to -day and filed.

Registrar

5/6/17

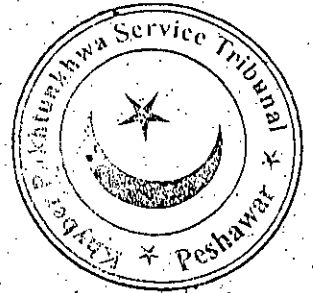
ATTESTED

EXAMINER
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 578/2017

Date of institution ... 05.06.2017
Date of judgment ... 27.09.2018



Asif Mir S/o Abdul Qayum, Account Supervisor, District Program Implementation Unit (DPIU) of Lady Health Workers Program, Khyber Pakhtunkhwa, District Abbottabad. ... (Appellant)

VERSUS

1. Provincial Government of KPK through Secretary Health, Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, SEEKING DECLARATION TO THE EFFECT THAT APPELLANT IS ENTITLED TO DRAW THE PAY AND ALLOWANCES ADMISSIBLE TO THE POST OF PROCUREMENT AND ASSISTANT LOGISTICS OFFICER BPS-16 SINCE ASSIGNMENT OF DUTIES OF THE SAID POST TILL DATE ALONGWITH INCREMENTS AND UPGRADATION OF APPELLANT INITIALLY FROM ACCOUNT SUPERVISOR BPS-7 TO DISTRICT OFFICE ASSISTANT BPS-14 IN LINE WITH UPGRADATION OF THEIR COUNTERPARTS VIDE OFFICE ORDERS ISSUED BY DEPUTY PROVINCIAL COORDINATOR, NATIONAL PROGRAM FOR F.P AND P.H.C, GILGIT BALTISTAN DATED 21.06.2011 AND 01.07.2011 AND THEN TO THE POST OF PROCUREMENT AND ASSISTANT LOGISTICS OFFICER BPS-16 IN ACCORDANCE WITH OFFICE ORDER NO. 2867-71 DATED 25.11.2016 ISSUED BY THE RESPONDENT NO. 2 AND SUBSEQUENT OFFICE ORDER NO. 20843-44 DATED 29.12.2016 ISSUED BY THE DISTRICT HEALTH OFFICER, ABBOTTABAD. THE REFUSAL OF THE RESPONDENTS TO ACT ACCORDINGLY IS ILLEGAL, UNLAWFUL, VOID, ARBITRARY, DISCRIMINATORY, PERVERSE, AGAINST THE FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLES 25 & 27 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN AND LIABLE TO BE RECTIFIED.

M. Amin
27.9.2018

Mr. Munir Ahmad Bhatti, Advocate.
Mr. Muhammad Jan, Deputy District Attorney

For appellant.
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. MUHAMMAD HAMID MUGHAL

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

MUHAMMAD AMIN KHAN KUNDI, MEMBER:-

Our this judgment shall also

dispose of instant service appeal as well as

- I. Service Appeal No. 579/2017 titled Gul-fu-Din Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- II. Service Appeal No. 580/2017 titled Muhammad Fayyaz Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- III. Service Appeal No. 581/2017 titled Noman Mehmood Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- IV. Service Appeal No. 582/2017 titled Ahmad Ali Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- V. Service Appeal No. 583/2017 titled Syed Musadiq Shah Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- VI. Service Appeal No. 584/2017 titled Gul Karim Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- VII. Service Appeal No. 585/2017 titled Ihsan Ullah Khan Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- VIII. Service Appeal No. 586/2017 titled Mumtaz Khan Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others.

M. Amin
27.9.2018

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- IX. Service Appeal No. 587/2017 titled Muhammad Zahir Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- X. Service Appeal No. 588/2017 titled Gul Wahid Shah Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XI. Service Appeal No. 589/2017 titled Anwar-ul-Haq Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XII. Service Appeal No. 590/2017 titled Muhammad Zahid Khan Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XIII. Service Appeal No. 591/2017 titled Shahid Mehmood Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XIV. Service Appeal No. 592/2017 titled Khalid Usman Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XV. Service Appeal No. 593/2017 titled Ikram Ullah Khan Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XVI. Service Appeal No. 594/2017 titled Arshad Mehmood Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,
- XVII. Service Appeal No. 595/2017 titled Muhammad Noor Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,

M. Amm
27.9.2018

ATTESTED

EXAMINER
Khyber Pakhtunkhwa

XVIII. Service Appeal No. 596/2017 titled Muhammad Raees Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others,

XIX. Service Appeal No. 597/2017 titled Sajjad Ali Khan Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others

XX. Service Appeal No. 598/2017 titled Nasir Iqbal Versus Provincial Government of KPK through Secretary, Health, Khyber Pakhtunkhwa, Peshawar and three others as common question of law and facts are involved in all the appeals.

2. Learned counsel for the appellants present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Arguments heard and file perused.

3. Brief facts of the cases as per appeals are that the appellants were initially appointed as Account Supervisors on fixed pay in Lady Health Program run by the Federal Government for supporting the Nation Family Planning and Primary Health Care Program launched in KPK in the year 1994. It was proposed in the approved PC-1 of the Nation Program for F.P & P.H.C and the lady Health Workers program by the Government of Pakistan, Ministry of Health, Islamabad that cadre of the Account Supervisors may be replaced/upgraded by District Office Assistant in pay scale BPS-14 and in pursuance of proposal in the approved PC-1 the Deputy Provincial Coordinator, National Program for F.P & P.H.C, Gilgit Baltistan, replaced/upgraded cadre of the Account Supervisors by District Office Assistant (BPS-14) vide office letter dated 21.06.2011. That subsequently an office order dated 01.07.2011 was issued by the Deputy Provincial Coordinator, National Program for F.P & P.H.C, Gilgit Baltistan, with reference to board proceedings vide Federal Program implementation units (FPIU) recommendations through letter No. 3-62/2010-PHC/Admin dated 21.06.2011 regarding up-gradation of post of Account

M. Jan
27.9.2018

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

Supervisors into District Office Assistants at respective District Program Implementation Units (DPIU) thus post of Account Supervisors were upgraded as District Office Assistants BPS-14. That after the passage of Constitution (18th Amendment) Act, 2010, the subject of health devolved upon the provinces as such the Lady Health Workers Program run by the Federal Government under National Program for Family Planning and Primary Health Care, also devolved upon the provinces. The services of the appellants working in their respective District Program Implementation Unit (DPIU) of Lady Health Workers Program, KPK was regularized by the Provincial Government Health Department, respondent No. 2 in BPS-7 with effect from 01.07.2012 vide notification No. 1437 dated 13.10.2014. That an application was submitted by the appellants working in their respective DPIU of Lady Health Workers Program to the respondent No. 3 for up-gradation of the post of Account Supervisor BPS-7 to the post of District Office Assistant BPS-14 but no cogent step was taken by the competent authority. That instead of up-gradation of the post of Account Supervisor to District Office Assistant the respondent No. 2 vide office order No. 2867-71/DGHS/IHP/2016-17 dated 25.11.2016 assigned duties of the post of Procurement and assistant Logistics Officer BPS-16 as contained in the approved PC-1 of the project "Integration of Health Service Delivery with Special Focus on MNCH; LHW, EPI and Nutrition Program" to the appellants in the district. That the respondent No. 4 issued another office order No. 2083-44 dated 29.12.2016 assigning the duties of the Procurement and assistant Logistics Officer BPS-16 in district till further orders. The appellants feeling aggrieved filed departmental appeal on 10.01.2017 but the same was not responded hence, the present service appeal and prayed that on acceptance of the appeals an appropriate order may pleased by passed declaring the appellant as entitled to draw the pay and allowances admissible to the post of Procurement and Assistant Logistics Officer BPS-16 since assignment of duties of the said post till date alongwith

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

increments and up-gradation initially from Account Supervisor BPS-7 to District Officer Assistant BPS-14 in line with office orders issued by the Deputy Provincial Coordinator, National Program for F.P and P.H.C, Gilgit Baltistan dated 21.06.2011 and 01.07.2011 and then to the post of Procurement and Assistant Logistics Officer BPS-16 on regular basis in accordance with office order No. 2867-71 dated 25.11.2016 issued by the respondent No. 2 and subsequent office order No. 20843-44 dated 29.12.2016 issued by the District Health Officer and any other relief which this Honorable Tribunal deem fit and proper in the circumstances of the case may also be granted and prayed.

4. At the very outset learned Deputy District Attorney raised preliminary objections that under Rule 3 sub-rule 2 of Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986 where the order of the competent authority affect more than one civil servant then every affected civil servant shall prefer the appeal separately but in the present appeals all the appellants have submitted joint departmental appeals annexure (K) dated 10.01.2017 therefore, the present service appeals are not maintainable and prayed that without touching the merit of the case the present service appeal may be dismissed.

5. On the other hand, when the learned counsel for the appellants confronted with the aforesaid situation/point, he stated that though the appellants have filed joint departmental appeal dated 10.01.2017 but the same is mere technicality and is not fatal to the present appeals therefore, prayed that the objection of the learned Deputy District Attorney has no force.

6. Admittedly under Rule 3 sub-rule 2 of Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986 where the order of the competent authority affect more than one civil servant then every affected civil servant shall prefer the appeal separately but in the present appeals all the appellants have submitted joint departmental appeals dated 10.01.2017 to the departmental authority for promotion to BPS-16 of

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

M. Amin
27.9.2018

Account Supervisor in Lady Health Workers Program KPK therefore, in our view the present appeals are not maintainable due to filing of joint departmental appeals. Hence, the same are dismissed. However, the appellants are at liberty to file separately departmental appeal against the impugned order and after disposal of departmental appeal or expiry of stipulated period they are at liberty to file service appeals if so advised subject to all legal objections. Parties are left to bear their own cost. File be consigned to the record room.

Announced
27.09.2018

Sd/- M. Amin Khan Kundli
Member

Sd/- M. Hamid Mughal
Member

Certified to be true copy

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	08-10-18
Number of Words	3200
Copying Fee	180
Urgent	200
Total	200
Name of Copyist	<i>[Signature]</i>
Date of Completion of Copy	08-10-18
Date of Delivery of Copy	08-10-18