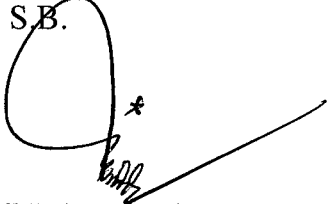


15.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 16.09.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

30.11.2021

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG for respondents present.

Written reply/comments not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments. Granted. To come up for Written reply/comments on 24.02. 2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

24.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 11.05.2022 for the same as before.



Reader

11.05.2022

Counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General present. Nemo for respondent Department.

Written reply on behalf of respondents is still awaited. Notice be issued to all the respondents for submission of reply/comments. To come up for written reply/comments on 15.07.2022 before S.B.


(Rozina Rehman)
Member (J)

12.07.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel contends that the appellant was not considered for appointment in the process of recruitment in the year, 2015 for want of authenticity of his professional qualification. Having come across this position, the appellant according to learned counsel, had been pursuing different remedies before the competent forums for authenticity of his professional qualification and he ultimately succeeded. Consequently, appointment of the appellant was made on 18.01.2021. Learned counsel contends that the appellant was entitled to be appointed from the date when other appointees got the appointment in pursuance to the same selection process which culminated in the year, 2015. Points raised need consideration. The appeal is admitted for regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 30.11.2021 before the D.B.

**Appellant Deposited
Security & Process Fee**

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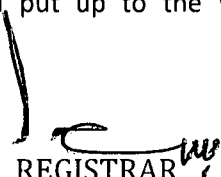

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5696 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/05/2021	<p>The appeal of Mr. Saqib Khan presented today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	03/06/21	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/07/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PUKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

APPEAL NO. 5696...../2021

Saqib Khan

VERSUS

Secretary Health Khyber Pakhtunkhwa Secretariat
Peshawar and others

INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Appeal		1-4
2.	Affidavit.		5
3.	Addresses of Parties.		6
4.	Copy of the Inquiry Report	"A"	7-11
5.	Copy of the Court Judgment	"B"	12-20
6.	Copy of the appointment order and OIA	"C" "D"	21-24
7.	Wakalatnama		25

Dated: /05/2021

Appellant

Through

Naila Jan
AHC

Advocate High Court Peshawar.

D

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

APPEAL NO...../2021

Saqib khan PHC Technician (MP) BPS 12 CH Zargon Kheil
Sub division Darra kohat

.....Appellant

Vs

1. Secretary Health Khyber Pakhtunkhwa Secretariat
Peshawar:-
2. Director General Health Services Warsak Road Peshawar
3. District Health Officer Kohat.
4. Deputy District Health Officer Sub division Darra kohat

.....(Respondents)

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED APPOINTMENT
ORDER DATED 18/01/2021 WHEREBY THE
APPELLANT HAS BEEN APPOINTED AS PHC TECH
(MP) BPS 12) WITH IMMEDIATE EFFECT INSTEAD
OF GIVING EFFECT FROM DATED 18/06/2015 AND
NOT DECIDING DEPARTMENTAL APPEAL OF THE
APPELLANT DESPITE OF EXPIRY OF THE
STATUTORY PERIOD OF 90 DAYS.**

Prayers: - *On Acceptance of this Service Appeal the
impugned order of appointment dated 18/01/2021 may
kindly be modified to the extent of giving effect from
dated 18/06/2015 with all back benefits, instead of
immediate effect.*

Respectfully Shweth;

The appellant submits as under;

1. That the agency surgeon FR Kohat advertised posts of Medical Technician (BPS-9) on 03/01/2015 and the appellant being eligible applied for the same.
2. That thereafter without in violation of law and Rules DSC prepared an illegal merit list whereby failed candidate were shown passed and appointment order dated 18/06/2015 was issued in utter disregard of law and rules whereby blue eyed of the agency surgeon was appointed however the appellant despite the fact that he was eligible and qualified for the post was not appointed.
3. That the appellant feeling aggrieved from the illegal appointment order dated 18/06/2015 challenge the same before the Peshawar High Court in Writ Petition No 2295-P/2015 and the Honourable Court vide order sheet dated 09/05/2019 order for an inquiry to probe in to the recruitment of Medical Technician by Agency Surgeon FR Kohat and in implementation of the court direction an inquiry committee was constituted who conducted the Inquiry and found that the Agency surgeon has committed gross illegalities in appointment and in the so called Merit list in violation of law and rules .The committee prepared its own merit list on the basis of the available record in which the appellant name was placed at serial No 03 and the report was submitted before the court.**(Copy of the Inquiry Report is annexure A)**
4. That the Peshawar High court vide its judgment dated 01/12/2020 disposed of the Writ Petition and Respondent No 4(the then Agency Surgeon/Deputy DHO Kohat) was directed to pass an order on the Inquiry report.**(Copy of the Court Judgment is annexed as B)**

5. That the Respondent No 4 issued the impugned appointment order dated 18/01/2021 of the appellant, as per merit list prepared by the Inquiry committee, appointed by the High court, however the appointment order was issued with immediate effect, instead of giving effect from dated 18/06/2015, in violation of the valuable rights of the appellant. (Copy of the appointment order is annexed as C)
6. That feeling aggrieved from the impugned order dated 18/01/2021, the appellant filled a departmental appeal through proper channel however despite of expiry of the statutory periods the same has not responded yet. (Copy of D/A is annexed as D)
7. That having no other adequate remedy hence the appellant filling the instant appeal on the following grounds

GROUND

- A. That the impugned order is against the law & principles of Natural Justice hence liable to be rectified to the extent of giving effect from the dated 18/06/2015 instead of immediate effect.
- B. That other blue Eyed chap was illegally appointed vide order dated 18/06/2015 however despite the fact that the appellant was on top of the merit list however instead of the appellant, illegally appointed other unqualified persons which is evident from the inquiry report hence the appellant is entitled for appointment w.e.f 18/06/2015 instead of immediate effect.
- C. That delayed appointment of appellant was due to the illegality committed by the Respondents however the

appellant was made suffered for the illegality hence the appellant is entitled for antedating of appointment order.

D. That as per dictum laid down by the Apex court in judgment reported as 2020 SCMR 1957 is that public functionaries are legally bound to act in accordance with law and rules however in the case of appellant they acted in violation of law and rules.

E. That throughout the period the appellant was jobless and was facing financial problems due to the illegal acts of the Agency Surgeon hence the appellant is entitled for antedating of appointment order.

F. That the appellant has not been treated in accordance with Art 4 & 25 of the constitution of Islamic Republic of Pakistan 1973

G. That the appellant seeks permission of this Honourable Court to adduce other grounds during final hearing of the case.

It is therefore requested that the Service Appeal may kindly be accepted as prayed for.

APPELLANT

Through


NAILA JAN

Advocate High Court
Peshawar.

5

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

APPEAL NO...../2021

Saqib Khan

VERSUS

Secretary Health Khyber Pakhtunkhwa Secretariat
Peshawar and others

AFFIDAVIT

I, Saqib khan PHC Technician (MP) BPS 12 CH Zargon Kheil Sub division Darra kohat, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

Identified By:

Naila Jan Saqib

Advocate High Court

Peshawar.

6

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

APPEAL NO...../2021

Saqib Khan

VERSUS

Secretary Health Khyber Pakhtunkhwa Secretariat
Peshawar and others

ADDRESSES OF PARTIES

APPELLANT.

Saqib khan PHC Technician (MP) BPS 12 CH Zargon Kheil
Sub division Darra kohat

RESPONDENTS:

1. Secretary Health Khyber Pakhtunkhwa Secretariat
Peshawar.
2. Director General Health Services Warsak Road Peshawar
3. District Health Officer Kohat.
4. Deputy District Health Officer Sub division Darra kohat

Dated: /05/2021

Appellant

Through

Naila Jan

Advocate High Court Peshawar.

FACT FINDING INQUIRY TO PROBE INTO THE ALLEGED IRREGULARITIES IN RECRUITMENT OF TECHNICIANS IN 2014 BY AGENCY SURGEON FR KOHAT.

AUTHORIZATION:-

Through Notification No. SOH-III/819/2019 (inquiry FR Kohat) dated 24-10-2019. in pursuance to writ petition No. 2295 - 1/15 in order sheet dated 09-05-2019.

INQUIRY COMMITTEE:-

The following inquiry committee was constituted.

- | | | |
|------|--|----------|
| i. | Deputy Secretary - III | Chairman |
| ii. | Section Officer Lit-I Health Department. | Member |
| iii. | Deputy Director Paramedics DGHS. | Member |

TORS.

The inquiry committee shall probe in to the recruitment of Medical Technicians in 2014 by Agency Surgeon FR Kohat which culminated into a litigation case in Peshawar High Court and submit report alongwith its recommendations.

BACK GROUND.

In 2014 five Medical Technicians were appointed by the then Agency Surgeon (now Deputy District Health Officer, Kohat) through appointment letters No.2575-79, 2580-84, 2585,89, 2590-94, 2595-99 dated 05-06-2015 (Annex-A). later on in 2015 Mr. Saqib Khan & Others through writ petition No. P/2015-2995 versus Agency Surgeon and others, objected the recruitment process of Medical Technicians done in 2014 by the then Agency Surgeon FR Kohat and contested through their writ petition that selected candidates have low merit in comparison to Mr. Saqib and others.

In order to ascertain the real position Director Health Services Ex-FATA nominated the following Enquiry officers to probe in to the matter.

- i. Dr. Shams Urrahman
- ii. Mr. Ahsan Saleem

Through their findings the inquiry committee pointed out defects in preparation of merit list and gives its input in shape of conclusion (Annex-B). But further in recommendation emphasized on the need of another high level inquiry because appointed candidates have served for three years under directorate of Health Services FATA as Medical Technicians and have also got salaries for three years, In continuation of previous inquiry committee recommendations, Peshawar High Court directed Health Department to constitute another high level inquiry hence the Secretary Health Department constituted inquiry committee at hand.

K/S

PROCEEDINGS OF THE ENQUIRY.

In view of the forgoing, inquiry proceeded as follows.

1. Orientation meeting of the inquiry committee on dated 18-11-2019.
2. Letter (**Annex-C**) to Agency Surgeon FR Kohat (now Deputy DHO sub Division Adam Khel) directed him to be prepare for the inquiry and make available the relevant persons/record. The persons against whom complaint and writ petition was instituted in Peshawar High Court, Peshawar, appear before the inquiry committee and the complainant did not appear that day, in fact, they visited the Health Department on the very next day to present their point of view.

3. DOCUMENTS WERE EXAMINED.

The following documentary evidence was obtained and examined by the inquiry committee.

- a. **Metric Certificates/DMC.**
- b. **Experience certificates.**
- c. **Diploma certificates/DMC.**
- d. **Domiciles**
- e. **Service Books**
- f. **CNIC**
- g. **Appointment letters.**
- h. **Merit list.**
- i. **Advertisement.**

The above documents were examined keeping in view the requirement of the desired candidates as reflected in newspapers.

KAM
/

FINDINGS

1. Adil Khan s/o Zaman Sher.

He was appointed by the then Agency Surgeon FR Kohat and was given 82 marks, 50 for matric, 15 for Health Diploma, 7 for interview and 7 for experience, while after checking of the available record / documents he has 79 marks. He has only 2 years experience as per available documents. He should be placed at S.No.01 of the merit list.

2. Majid Khan s/o Usman Khan.

He was given 55 marks i.e matric 38, Health Diploma 15, interview 02. After checking of the available record he has matric 50, Health Diploma 15, experience 10 interview 02 and securing total of 77 marks. He should be at S.No. 02 of the merit list.

3. Saqib Khan s/o Badshah.

He was awarded total 67 marks by the DSC. Matric 50, Health diploma 15, interview 02, which is correct. He should be placed at S.No.3 of the merit list.

4. Shah zaman s/o zameergul.

He was appointed by the then Agency Surgeon FR Kohat by awarding total 80 marks. For matric. 50, Health Diploma 15, experience 10 and interview 05 marks. While after checking the available record he has 38 for matric, 15 for Health diploma 05 for interview and 07 for experience, securing total 65 marks because he has 2 years valid experience and having matric 2nd division certificate. He should be placed at S.No.4 of the merit list.

5. Nasir Farooq s/o Umar Habib.

He was appointed by the then Agency Surgeon FR Kohat and was placed at 2nd position. He was awarded 82 marks, while after the scrutiny, he has 38 marks for SSC, 15 for diploma, 07 for interview and 04 for experience, he is securing total 64 marks. He should be placed at S.No.05 of the merit list.

6. Muhammad Asif S/O Khan Mir.

Muhammad Asif was appointed by the then Agency Surgeon FR Kohat awarding marks i.e matric 50, Health Diploma 15, experience 05 and interview 07 respectively and placed at serial No. 5 of the merit list.

During the enquiry 2 metric certificates/2 Diploma Certificates came to surface i.e one 1st Division provided by the then Agency Surgeon while the 2nd provided by the Department having 2nd division in SSC. During cross questioning he has admitted that he has 2nd division SSC certificate but later on not clarified the same. While one Diploma certificate provided is of 2014 (looks fake) and the other is issued in 2015 after the date of interview. Moreover he has no justified experience. The experience certificate provided is obtained before the Diploma rendering it irrelevant.

The previous Enquiry Committee deducted 2 marks of interview which is not justified after laps of 4 years which should not be deducted. From calculation of available record he got 60 marks.

According to his marks he comes at S.No.6 of the merit list.

7. Abu Bakar s/o Ibrahim.

He was appointed by the then Agency Surgeon FR Kohat awarding marks i.e matric 38, Health Diploma 15, interview 04 and 7 marks for experience Total 64

38

W

10

marks. While after checking the available record he has total 57 marks. Matric 38, Health Diploma 15, interview 04 marks. He should be placed at S.No.07 of the merit list.

8. Samiullah s/o Ikram Khan.

He was awarded 53 marks i.e matric 30, Health Diploma 20 interview 03 while after scrutiny of the available record he has matric 38, experience 0, Health Diploma 15 interview 03 hence securing grand total of 56.

He should be placed at S.No.08 of the merit list.

9. M. Qayyum s/o Khan Mir.

He was given 52 marks. Matric 30, Health Diploma 20, Interview 02 by the then Agency Surgeon FR Kohat. After checking the available record he has total 55 marks i.e matric 38, Health Diploma 15, interview 02 total 55.

He should be placed at S.No.09 of the merit list.

10. Muhammad Riaz s/o Jehangir.

He was awarded 52 marks i.e matric 30, Health Diploma 20, interview 02 by the DSC. After checking of the available record he has total marks 55. matric 38, Health Diploma 15, experience 0 (being irrelevant experience) interview 02 marks.

He should be placed at S.No.10 of the merit list.

11. Muhammad Idrees s/o GulamKhel.

He was given 48 marks i.e matric 25, Health Diploma 20, Interview 03 marks while during checking the available record he has 30 marks in matric (3rdDiv), Health Diploma 15 interview 03, total 48 marks. He was not selected for the post because he has 3rd Division in SSC.

KMM
[Signature]

List of DSC Recommendations			
S.No	Name	Marks	Remarks
1.	Adil Khan	82	Selected
2.	Nasir Farooq	82	Selected
3.	Shah Zaman	80	Selected
4.	Abu Bakar	79	Selected
5.	Muhammad Asif	77	Selected
6.	Saqib Khan	67	
7.	Majid Khan	55	
8.	Sami Ullah	53	
9.	Muhammad Riaz	52	
10.	Muhammad Qayum Khan	52	
11.	Muhammad Idrees	48	

Recommendations of the 1 st Enquiry Committee			
S.No	Name	Marks	Remarks
1.	Adil Khan	82	
2.	Majid Khan	77	
3.	Nasir Farooq	70	
4.	Shah Zaman	68	
5.	Saqib Khan	67	
6.	Sami Ullah	62	
7.	Muhammad Riaz	58	
8.	Muhammad Asif	58	
9.	Abu Bakar	57	
10.	Muhammad Qayum Khan	55	
11.	Muhammad Idrees	48	

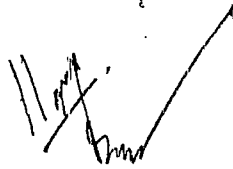
11

Conclusions of the 2nd Enquiry Committee.

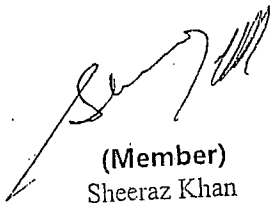
S.No	Names	Marks
✓ 01.	Adil Khan	79
✗ 02.	Majid Khan	77
✗ 03.	Saqib Khan	67
✓ 04.	Shah Zaman	65
✓ 05.	Nasir Farooq	64
06.	Muhammad Asif	60
07.	Abu Bakar	57
08.	Samiullah	56
09.	Muhammad Qayum Khan	55
10.	Muhammad Riaz	55
11.	Muhammad Idrees	48

Recommendations:-

Keeping in view the above factual position merit should be followed strictly.



(Chairman)
Kamran Khan
Deputy Secretary (Admn;)
Health Department

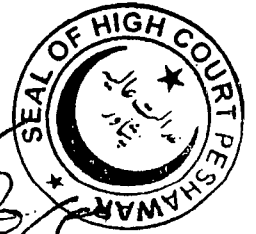


(Member)
Sheeraz Khan
Deputy Director Paramedics
DGHS, KP, Peshawar.



(Member)
Bakhtiar Khan
Section Officer Lit-I
Health Department.

12
Auliy B^u
BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



1. Saqib Khan son of Bacha Khan R/O
Azadi Meela Akhur Wal Dara Adam Khel
F.R Kohat
2. Muhammad Riaz son of Jehangir Khan Afridi
Jawaki PO: Bilatang F,R Kohat.
3. Samiullah son of Akram Khan
R/O Samandi Meela Habib Killi
Dara Adam Khel F.R Kohat.
presently H.No. 34 Street-1
Gulshan Abad, Kohat.
4. Muhammad Qayyum Khan son of Khan Mir
R/O Jawaki Fateh Khel Qeemat Khel
Balitang, F.R Kohat.
5. Idrees son of Ghulam Khel R/O
Dara Adam Khel F.R Kohat.
6. Majid Khan S/O Usman Khan
R/O Darra Adam Khel F.R Kohat.

ATTESTED
EXAMINER
Peshawar High Court

....PETITIONERS.

Versus

1. Agency Surgeon F.R Kohat.
Malik Plaza Kohat Road, Peshawar.
2. Director Health Service (FATA)
through Agency Surgeon, F.R Kohat.

FILED IN DAY

Deputy Registrar

23 JUN 2015

13

3. Assistant Political Agent F.R Kohat.
4. Dr. Sahibzada Muhammad Khalid
Representative Director Health
Services FATA, through Director
Health Services FATA Secretariat, Peshawar.
5. Dr. Naseemul Haq M.O BH.U Shen Dhand
F.R Kohat.
6. Dr. Tayyaba Azeem D.M.O C.H Zarghun Khel
F.R Kohat.
7. Mr. Qaisar Jamal Afridi, MNA
NA-47, Tribal Areas
8. Adil Khan S/o Zaman Sher Medical Technician, BHW, Poya
Tanaki FR Kohat.
9. Shah Zaman S/o Zammer Gul Medical Technician, BHW Aya Khel
Tanaki FR Kohat.

....RESPONDENTS.

WRIT PETITION UNDER ARTICLE 199 OF THE

CONSTITUTION OF ISLAMIC REPUBLIC OF

PAKISTAN, 1973.

Respectfully Sheweth

That respondent No.1 advertised posts of
Medical Technician BPS-9 in different newspapers
dated 3.1.2015 for which interview were held

on 22.2.2015. Copy of advertisement is attached
as annexure A).

ATTESTED

EXAMINER
Peshawar High Court

That petitioners alongwith other candidates

applied for the said posts being eligible.

Educational documents of petitioner No.1 are attached

10 M. Asif S/o Khan Amir Medical
Technician Civil Hospital Zarkhun Khel
FR Kohat

11 Abu Bakkar S/o M. Ibrahim Medical Tech
Civil Hospital Atarwal FR Kohat.

12 Nasir Farooq S/o
Umor Habib Medical Tech
BHW Turki Ismail Khel
Tanaki FR Kohat.

2.

22/02/2015

3. That for the said purposes a committee consisting of 5 members including respondent No.1, Rep: of respondent No.2 i,e respondent No.4 representative of respondent No.3 while respondent No.5 and 6 were b; name included. *(Notification is attached as -c)*

4. That the interview was held by ~~Abdul~~ Jamal Abdul Nasir in which respondent No.4 , 5 and 6 were present while representative of respondent No.3 never attended the interview thus the board of interview was incomplete.

5. That in clear violation of rules and regulations Dr. Jamal Abdul Nasir respondent No.1 had pick and chosse his blue eyed one to which even the present members of selection committee were not agreeing so much so that till date the names of the candidates whose appointment has made by respondent No.1 their list have not been signed and approved by respondent No.4 and 6 which shows their dis-agreement to these appointments.

FILED
23 JUN 2015

ATTESTED
EXAMINER
Peshawar High Court

6. That this fact is also clear from the fact that till date no merit list or list of appointed candidates have been issued but one Abu Bakar Muhammed Asif, Shah Zaman, Umar Farooq have been appointed and are working as Medical technician on their posts in clear violation of the rules and regulations.
7. That it is to be noted that one Muhammad Asif mentined above, as per informqtion gathered by the petitioner was failed in interview while Shah Zaman is over-aged aging 34 years.
8. That respondent No.1 in conavencnee with respondent No.7 have made these appointments and now is forcing respondent No.4m5 and 6 to validate these appointments.
9. That the petitioner have made several applications to respondent No.1, Director AGPR and Addl: Chief Secretary FATA in respect of these gross violation and illegal appointments but with no result. Copies of applications are attached. *as-12)*

FILED TODAY
Deputy Registrar
11/11/2015

ATTESTED
EXAMINER
Peshawar High Court

16

10. Now the petitioner^o have no other alternate remedy available approaches this Hon'able court on the following grounds amongst other inter-alia :-

GROUNDS

A. That the appointments made and the exercise carried out by respondent No.1 is illegal, unlawful and needs to be struck down.

B. That in absence of complete selection committee and in case of dis-agreement and non signing of the list of candidates by the members of committed respondent No.1 had no jurisdiction in him to make these appointments.

C. That the appointments made or otherwise without merits politically motivated and without following the rules and criteria laid down for the appointments in the mentioned advertisement.

ATTESTED

EXAMINER
Peshawar High Court

That the action of respondent No.1 are against the fundamental ~~rights~~ rights of the petitioner, and in the circumstances the respondent No.1 by making the appointments had acted as forum non iudice.

FILED TODAY

Deputy Registrar

26 JUN 2015

E. That additional grounds will be raised at the time of arguments with prior permission of this Hon'able court.

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It is therefore prayed that on acceptance of this petition, the appointments made by respondent No.1 be declared illegal, and unlawful, *ab initio*, that the respondent No.1 Board 3 may be directed to make the appointments afresh according to the rules and regulations and criteria laid down in the advertisement. Any other relief which not specifically asked for may also be awarded.

INTERIM RELIEF

Petitioners,

That the operation of any notification issued in consequence of interviews held by respondent No.1 through incomplete committee may graciously be suspended till final decision of the case.

Petitioners,

Through:

(S. SHAKIL KHAN GILLANI)

Advocate, Peshawar.

Dated: 22.6.2015

FILED TODAY
Deputy Registrar
23 JUN 2015

REGISTERED TO BE TRUE COPY
Registrar
Peshawar
No. 15/2020

15 DEC 2020

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Note:- No such like writ petition has earlier been
filed as per ins truction of my client.

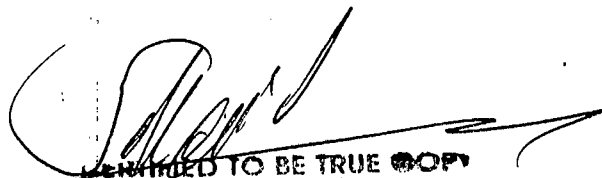


LAW BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973
2. Other relevant documents on the subject.
3. PLD 2002 SC 830



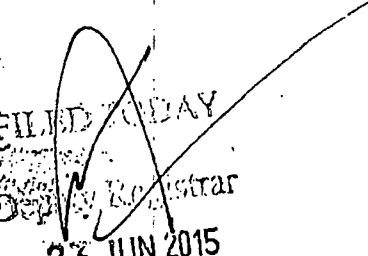
ADVOCATE



VERIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 27 of
the Qanun-e-Shanadat Order 1984

15 DEC 2009



FILED TODAY
Deputy Registrar
23 JUN 2015

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

AWP No. 2295-P/2015

**Saqib Khan and others vs. Deputy District Health Officer,
Sub-Division Darra, Kohat Division and others.**

JUDGMENT.

Date of hearing: 01.12.2020

Petitioner (s): By Mr. Saadullah Khan Marwat, Advocate.

**Respondent (s): By M/s Syed Sikandar Hayat Shah AAG and
Zartaj Anwar, Advocate.**



SYED ARSHAD ALI, J.- Through the instant petition, the petitioners, who are six in numbers, have challenged the Office Order dated 18.06.2015 issued by the Erstwhile Agency Surgeon FR Kohat whereby private respondents were appointed against various posts of Medical Technician etc.

2. Grievance of the present petitioners is that during the said appointment, merit was not followed. During the proceedings, the respondents have placed on file inquiry report whereby the inquiry committee comprising of three senior officers of the respondents have found the illegalities and irregularities in the impugned appointment process.

3. Learned counsel representing the private respondents has raised an objection on the said inquiry report by stating that it is only a fact finding inquiry in which private

ATTESTED
EXAMINER
Peshawar High Cou

respondents were never associated, therefore, the said inquiry has no legal value.

4. Be that as it may, on the basis of said inquiry report, the competent authority, so far, has not passed any final order, therefore, in the circumstances, we deem it appropriate to refer the matter to the competent authority/respondent No.1 to personally look into the matter and pass an appropriate order on the basis of the said inquiry report strictly in accordance with law.

5. The Petition stands disposed of accordingly.

Announced
01.12.2020

No. 19181

Date of Presentation of Application 15/12/2020

No of Pages 9-9

Copying fee 36/-

Total 36/-

Date of Preparation of Copy 15/12/2020

Date of Delivery of Copy 15/12/2020

Received By [Signature]

CERTIFIED TO BE TRUE COPY

15 DEC 2020



Annex C

25

OFFICE OF THE DEPUTY DISTRICT HEALTH OFFICER TSD DARRA KOHAT
Bungalow No.16 sector D-2 Phase II near Passport Office KDA Kohat Phone #: 0922-513351

OFFICE ORDER:

In the light of honorable high court decision announced on 01-12-2020 in writ petition no 2295-2015 communicated by deputy registrar (J) Peshawar high court Peshawar vide his letter no 30030-826/2020/WP-MN dated 08-12-2020 and Director General health services KP Peshawar letter no 18-20/(lit) dated 04/01/2021 Mr. Saqib Khan S/o Badshah Khan Azdai mela Akhurwal Darra Adam Khel Kohat is hereby appointed as PHC Tech (MP) BPS 12) plus usual allowances as admissible under the rules) with the following terms and conditions.

1. That he is declared medically fit for Govt. Service.
2. That he is domiciled of Sub Division Darra.
3. That he will be governed by such rules and orders as may be issued by the government from time to time for the category of the government service to which he belongs to.
4. His appointment will be purely on temporary basis and can be terminated from service without any notice but in case he wishes to resign from service he will submit written notice within 30 days or deposit 30 days' pay in lieu of 30 days' notice period.
5. He will be served anywhere in Sub Division Darra.
6. He will be on probation period for one year (extendable)
7. No TA/DA will be paid on assuming of duty on his first appointment.

If he accepts this offer he is directed to report to the office of the undersigned for further posting on above terms and condition within 15 days of issuance of this order otherwise, the order shall stand automatically cancelled.

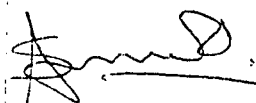
SDI-----

Deputy District Health Officer
Sub Division Darra Kohat

No. 107-13 /DDHO/TSD/Darra Kohat Dated. 18/01/2021.

Copy forwarded to the:

1. The Secretary to GOVT of KP Health Department Peshawar.
2. The Director General Health service KP Peshawar with reference to his letter no referred to above
3. The Deputy Registrar (J) Peshawar High court Peshawar with reference to his letter no referred to above
4. The District Health Officer Kohat
6. The District Account Office Kohat
7. The Accountant DDHO Office
8. Saqib Khan S/o Bacha Khan Azadi Mela Darra Kohat


Deputy District Health Officer
Sub Division Darra Kohat

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DEPUTY DISTRICT HEALTH OFFICER SUB DIVISION DARRA KOHAT

Bungalow No.16 sector D-2 Phase II Near Passport Office KDA Kohat
Phone #: 0922-513351

OFFICE ORDER: -


Mr: Saqib Khan PHC Technician Multi-Purpose (BPS-12) is hereby posted at CH Zarghun Khel vide this office order no. 107-13/DDHO/TSD/Darra Kohat, Dated:18/01/2021 is hereby directed to report for duty at CH Zarghun Khel, Sub Division Darra, Kohat in the best interest of public services.

SD/-----
Deputy District Health Officer
Sub Division Darra Kohat

No. 167-72 /DDHO/TSD/Darra Kohat Dated. 20 / 1 /2021.

Copy forwarded to:

1. The Director General Health Services KP, Peshawar for information.
2. The Deputy Registrar (J) Peshawar.
3. The District Health Officer Kohat.
4. The District Account Officer Kohat.
5. The Incharge CH Zarghun Khel, Sub Division Darra Kohat.
6. Saqib Khan S/O Badshah Khan.


Deputy District Health Officer
Sub Division Darra Kohat



To

The District Health Officer

Kohat.

Through Proper Channel

Subject:- Departmental Appeal from the impugned appointment order dated 18/01/2021 Whereby the appellant has been appointed as PHC Tech (MP) BPs 12) with immediate effect instead of giving effect from dated 18/06/2015.

Prayers: - On Acceptance of this Departmental Appeal the impugned order of appointment dated 18/01/2021 may kindly be modified to the extent of giving effect from dated 18/06/2015 with all back benefits, instead of immediate effect.

Dear Sir,

The appellant submits as under;

1. That the agency surgeon FR Kohat advertised posts of Medical Technician (BPS-9) on 03/01/2015 and the appellant being eligible applied for the same.
2. That thereafter without in violation of law and Rules DSC prepared an illegal merit list whereby failed candidate were shown passed and appointment order dated 18/06/2015 was issued in utter disregard of law and rules whereby blue eyed of the agency surgeon was appointed however the appellant despite the fact that he was eligible and qualified for the post was not appointed.
3. That the appellant feeling aggrieved from the illegal appointment order dated 18/06/2015 challenge the same before the Peshawar High Court in Writ Petition No 2295-P/2015 and the Honourable Court vide order sheet dated 09/05/2019 order for an inquiry to probe in to the recruitment of Medical Technician by Agency Surgeon FR Kohat and the Inquiry was conducted and the inquiry committee found that the Agency surgeon has committed gross illegalities in appointment and in the so called Merit list in violation of law and rules .the committee prepared its own merit list on the basis of the available record in which the appellant name was placed at serial No 03 and the report was submitted before the court.(Copy of the Inquiry Report is annexure A)
4. That the Peshawar High court vide its judgment dated 01/12/2020 disposed of the Writ Petition and the Agency Surgeon(Deputy DHO Kohat) was directed to pass an order on the Inquiry report.(Copy of the Court Judgment is annexed as B)
5. That the Deputy DHO Kohat issued the appointment order dated 18/01/2021 of the appellant as per merit list prepared by the Inquiry committee appointed by the High court however the appointment order was issued with immediate effect instead of giving effect

AS

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from dated 18/06/2015 in violation of the valuable rights of the appellant. (Copy of the appointment order is annexed as C)

6. That feeling aggrieved from the impugned order dated 18/01/2021 the appellant having no other adequate remedy hence filling the instant appeal on the following grounds

GROUNDS

- A. That the impugned order is against the law rules principles of Natural Justice hence liable to be rectify to the extent of giving effect from the dated 18/06/2015 instead of immediate effect.
- B. That other blue Eyed chap was illegally appointed vide order dated 18/06/2015 however despite the fact that that the appellant was on top of the merit list however the appellant not appointed but illegally appointed other unqualified persons which is evident from the inquiry report hence the appellant is entitled w.e.f 18/06/2015 instead of immediate effect.
- C. That delayed appointment of appellate was due to the illegality committed by the competent authority however the appellant was made suffered for the illegality hence the appellant is entitled for antedating of appointment order.
- D. That as per dictum laid down by apex court in judgment reported as 2020 SCMR 1957 is that public functionaries are legally bound to act in accordance with law and rules however in the case of appellant they acted in violation of law and rules.
- E. That throughout the period the appellant was jobless and was facing financial problems due to the illegal acts of the Agency Surgeon hence the appellant is entitled for antedating of appointment order.
- F. That the appellant has not been treated in accordance with Art 4 & 25 of the constitution of Islamic Republic of Pakistan 1973.

It is therefore requested that the departmental appeal may kindly be accepted as prayed for.



Yours obediently



17/2/2021

Saqib Khan PHC Tech(MP)

CH Zarghun kheil Sub division Darra kohat

بعدالت جدا ۱۴ کوس

طریقہ عمل دستور

2021ء منجانب اسلام آباد
تایمیفان بنام محنت

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام دستور کیلئے نام تجاریہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دیے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

نائب خات (اسپرینٹ)

طریقہ عمل

2021ء

ماہ

27

المرقوم

العبد العبد العبد

کے لئے منظور ہے۔

دستور

مقام

Attested

Accepted

طریقہ عمل

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

D.B

No.

Appeal No..... 5696 of 2021

..... Saqib Khan Appellant/Petitioner
Versus

..... Secy Health Post Respondent

Respondent No..... 1

Notice to: - Secretary Health KPK Peshawar.


WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 30/11/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

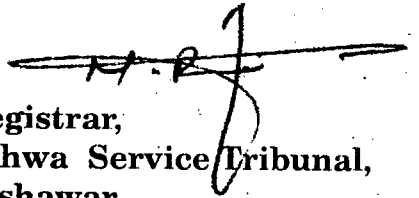
Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No..... dated.....~~

Given under my hand and the seal of this Court, at Peshawar this..... 16th.....

Day of..... Sep..... 20 21


28.5.21


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. D.B

No.

Appeal No. 5696 of 20²¹
Saqib Khan Appellant/Petitioner
 Versus
Secy Health Pesh. Respondent
 Respondent No. 2
Director General Health Services

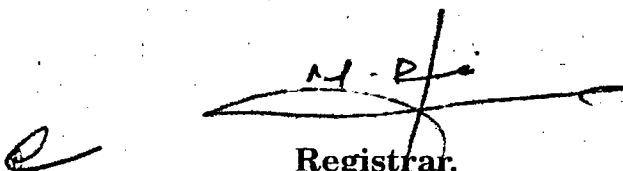
Notice to: — Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 20/11/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated..... 16/12

Given under my hand and the seal of this Court, at Peshawar this.....
Sep 21
 Day of.....20


 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

APPEAL No. 5696 of 20 21

Royd Saqib Khan

Appellant/Petitioner

Versus

Sey: Health WPK

RESPONDENT(S)

Respondent No. 3
Notice to Appellant/Petitioner

Distt. Health Offices
Kohat

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at 9 a.m.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

APPEAL No. 5696 of 20 21

Legd Saqib Khan

Appellant/Petitioner

Versus

Serj. Health KPK

RESPONDENT(S)

Notice to Appellant/Petitioner

Respondent No. 3

Distt. Health Offices
Iskhat.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at 9. am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.F
PESHAWAR.

No.

APPEAL No..... 5696 of 20 21

Sarib Khan

Repd

Appellant/Petitioner

Versus

Secy: Health UPN

RESPONDENT(S)

Respondent no. 4

Notice to Appellant/Petitioner

Deputy Distt. Health
Office Sub Division
Darya Kohat

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at 9 am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

APPEAL No. 5896 of 2021

Sawib Khan

Repd

Appellant/Petitioner

Versus

Serj. Health UPN

RESPONDENT(S)

Respondent No. 4

Notice to Appellant/Petitioner

Deputy Dist. Health
Offices Sub Division
Darza Kohat.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at 9 am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply

Registrar,
> Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. S.B

No.

APPEAL No. SB 96 of 20 21

Saqib Khan

Appellant/Petitioner

Versus

Secy. Health KPK

RESPONDENT(S)

Respondent no. 2
Notice to Appellant/Petitioner Director General Health
KPK Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at 9 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

5696

21

APPEAL No. Saavib Khan of 20

Appellant/Petitioner

Versus

Sayy. Health KPK Peshawar.

RESPONDENT(S)

Respondent no. 1 Secretary Health KPK Peshawar.

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/7/22 at Peshawar

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

h
7/7/22
3-40

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.