

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

In Re: Service Appeal No. 209/2019.

Dr. Fahad Iqbal VERSUS Government of KPK and Others

I N D E X

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HAWAR
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

In Re: Service Appeal No. 209/2019.

Dr. Fahad Iqbal VERSUS Government of KPK and Others

**APPLICATION FOR SETTING ASIDE EX-PARTE PROCEEDINGS ON
BEHALF OF RESPONDENTS 5, 6, 9, 10, 11, 14, 15, 19, 21, 22, 23, 26, 28, 29, 30,
31, 32, 33, 35, 41, 44, 47, 49, 50, 52, 54, 58, 59.**

Respectively Sheweth,

1. That the captioned appeal is sub-judice before this Hon'ble Tribunal where the next of hearing is fixed as 30th August, 2022.
2. The due to maltreatment of district administration with one of the member of a legal fraternity, the Khyber Pakhtunkhwa Bar Council lodged protest and decided to observe strike in all provinces by directing all legal fraternity to avoid appearance in any court and thus not to participate in the proceedings before any court of Khyber Pakhtunkhwa.
3. This strike remained continued and on the last date of hearing the strike remained continued which constrained the counsel of applicants to avoid attending court proceedings by submitting written reply as Bar Council initiated proceedings against some of the members of legal fraternity. Being constrained with situation as it developed, the council of the applicant could not submit their reply on that day.
4. Similarly, due to large number of applicants who are performing duties at far flung area of the province, it is inconvenient for applicants to attend and appear on each date of hearing that too, when the lawyers are observing strike on call of their bar council.
5. That even otherwise, the track record of instant appeal suggests that on one side, the case remained protracted due to own fault of the appellant as visible from order sheets that since institution of instant appeal till 15.12.2021 i.e. for



more than 2 years and 10 months the case could not proceed due to lack of interest of the appellant and since first appearance of applicants, the sword of last chance remained hanging on them.

- 6. It was in this background that the case was finally fixed for 10th June 2022 when the bar council has announced strike and all the lawyers including the counsel of applicants was not in a position to attend the case, however, the Hon'ble Tribunal while resorting to their previous order, commenced ex-parte proceedings against the applicants.
- 7. As the case has not been protracted due to the applicants rather the appellant himself was instrumental in dragging the case, therefore, the applicants cannot be punished in such terms for a single day default.
- 8. As the order impugned will frustrate the ultimate outcome of instant case and applicants undertake to remain careful in future, therefore, for interest of justice the order of ex-parte proceedings may kindly be set-aside and on the acceptance of instant application, the reply appended herewith by the applicants may kindly be considered and the applicants may kindly be allowed to participate in the proceedings.

Respondents

Khayal

Through

Habibanwar


HABIBANWAR
Advocate High Court, Peshawar

AFFIDAVIT

I Dr. Khizar Hayat, DGHS, Warsale Road, Peshawar.

Peshawar, do hereby solemnly affirm and declare on Oath that the contents of instant application are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this honorable tribunal.

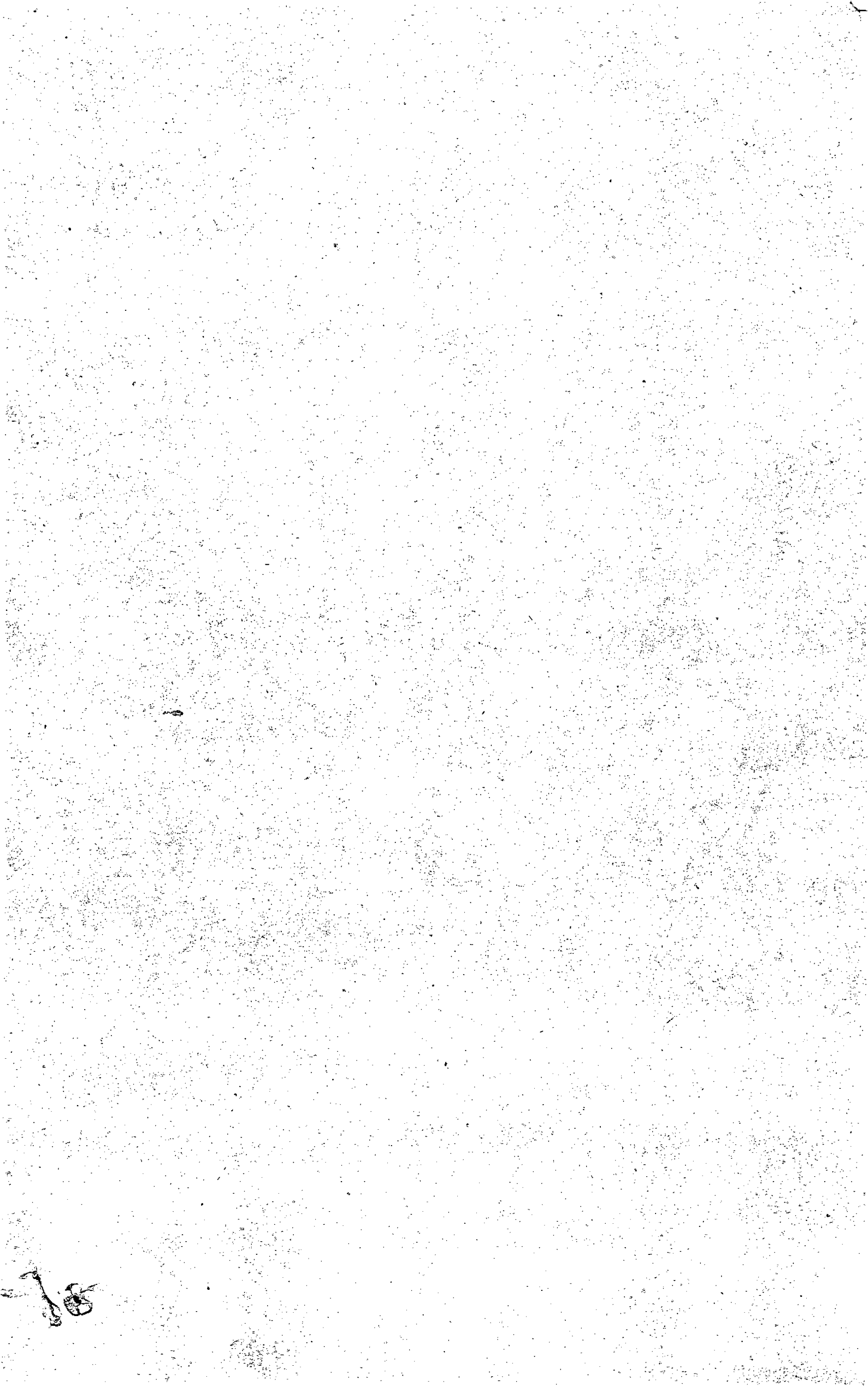
Khayal
30-8-22



DEPONENT

Khayal

CNIC No. 17301-1371229-3
Cell No. 03149029065



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. 209/2019.

Dr. Fahad Iqbal VERSUS Government of KPK and Others

APPLICATION FOR CONDONATION OF DELAY

Respectively Sheweth,

1. That the captioned appeal is sub-judice before this Hon'ble Tribunal where the next of hearing is fixed as 30th August, 2022.
2. It was due to delay in recording written order of 10th June that the applicants despite their several visits, not been able to obtained attested copy of the order mentioned above.
3. As in the meanwhile the Provincial Government announced Eid Holidays with effect from 8th July till 12th of July 2022 (both days inclusive), therefore, the counsel of applicants himself approached the office of registrar of this hon'ble tribunal on 13th July 2022 for obtaining attested copies by providing his own contact and mailing address in the office.
4. The learned counsel again visited the office of relevant section, however, no response was paid. Finally the counsel of the applicants received attested copy of order dated. 10th June from the concerned section on 29th August 2022.
5. Although the law requires that any such application has to be filed within one month, i.e. by 9th July, however, due to announcement of Eid Holidays from 8th to 12th of July and thereafter due to late supply of attested copies by 29th August, the delay in filling of application cannot be attributed to the applicant and can be condoned by this hon'ble tribunal in the interest of justice.

It is therefore, very humbly prayed that on acceptance of instant application and in the interest of justice, delay in filling application for setting aside ex-parte proceedings may kindly be condoned.

K Hayat

Respondents

Through

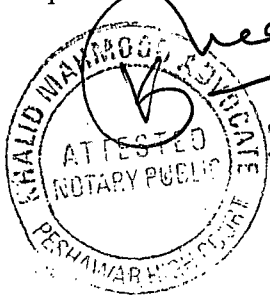
Habibanwar

**HABIBANWAR
Advocate High Court, Peshawar**

AFFIDAVIT

I *Dr KHIZAR HAYAT DGHIS PESHAWAR*

Peshawar, do hereby solemnly affirm and declare on Oath that the contents of instant application are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this honorable tribunal.

Handwritten signature
30-8-22


DEPONENT *K Hayat*

CNIC No. *17301-1371228-3*
Cell No. *03149029065*

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

In Re: Service Appeal No. 209/2019.

Dr. Fahad Iqbal VERSUS Government of KPK and Others

**WRITTEN REPLY AND PARAWISE COMMENTS ON BEHALF OF
RESPONDENTS 5, 6, 9, 10, 11, 14, 15, 19, 21, 22, 23, 26, 28, 29, 30, 31, 32, 33, 35,
41, 44, 47, 49, 50, 52, 54, 58, 59.**

Respectfully Sheweth:

Preliminary Objections:

1. That the appeal is incompetent and not maintainable in its present form.
2. That the instant appeal is hit by the doctrine of res-judicata.
3. That the appellant has neither any cause of action nor locus standi.
4. That the appellant has not approached this Hon'ble Tribunal with clean hand.
5. That the petition in hand is time-barred.
6. Impugned herein is a notification dated. 10.09.2018 whereby 59 doctors/ private respondents have been absorbed from general cadre to management cadre. It was on 11.12.2008 when the Government of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Health (Management) Services Rules, 2008 (hereinafter referred to as the Rules). These rules were challenged Dr. Sher Muhammad vide writ petition No. 2382/2009 before the hon'ble Peshawar High Court Peshawar. This petition was disposed of by the Hon'ble Peshawar High Court Peshawar by converting the writ petition to appeal and directing the respondent to decide the same. While approaching this hon'ble tribunal Dr. Sher Muhammad preferred appeal no. 513/2010 before this hon'ble tribunal which was finally decided by this hon'ble tribunal on 03.01.2012 in following terms;



"The tribunal observed 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) Services 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 qualification for posting in the management cadre posts but only provide them a cushion period and if they acquire the requisite qualification within two years from the date of decision, they may opt and join management cadre without effecting their seniority/ service.

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." ~~Annex A~~

- 7. The aforesaid judgment was further challenged by the official as well as private respondents in C.A No. 320-324 & 126-130 of 2012 in the Hon'ble Supreme Court of Pakistan. The Hon'ble Supreme Court vide interim order dated. 03.04.2012 suspended the judgment of the KP Service Tribunal. The interim order remained intact till final decision of the Apex Court vide judgment dated. 03.11.2016 which is reproduced as under;

"There seems to be hardly any reason much less justifiable to interfere with the impugned judgment of the Tribunal more so on the grounds urged by the learned ASC for the appellants. The Civil Appeal No. 320 to 324 of 2012 are therefore, dismissed.

Annex B

- 8. In view of the aforesaid judgments and suspension order dated. 03.04.2012 of the august Supreme Court, Rule 10 of the KP Health (Management) Service Rules

Am

2008 was amended by adding second proviso on 10.05/2017 for providing two years cushion period for induction into management cadre which ended on 09.05.2019. In view of the judgment of this hon'ble tribunal on 03.01.2012, the cushion period would have ended on 02.01.2014, however, due to suspension of the judgment by the apex court vide interim order dated. 03.04.2012, rule 10 of the said rules remained shrouded however, on dismissal of the appeals by the Apex Court on 03.11.201, the cushion period remained operational till 09.05.2019. therefore, not only the private respondents rather more than that were inducted/ transferred from general cadre doctors to management cadre since 2008 in terms of provision of rule 10 ibid.

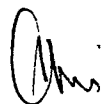
9. It was once again that Dr. Shams ur Rehman questioned the Notification on 07.05.2018 whereby the absorption/ induction of 88 private respondents/ doctors was challenged.

10. This Hon'ble Tribunal, while taking the case of co-appellant in instant departmental appeal namely, "Dr. Hamza Abbas Khan Vs. Govt of KPK etc." registered as Service Appeal No. 838/2018, decide the fate of absorption/ induction vide judgment dated. 22.03.2019. Annex-8

11. This judgment of the Hon'ble Tribunal was again assailed before the Apex Court in C.P No. 2048 to 2057 of 2019, however, the Hon'ble Supreme Court, vide Order Dated. 07.11.2019 declined leave to appeal and thus dismissed all the appeals. Annex-9

12. That the above decision of the Apex Court has now been assailed in review jurisdiction vide C.R.P No. 746 to 755 of 2019 where notice has also been issued. As such the matter is now substantially sub-judice before the apex court. Annex-

B



13. Furthermore, the impugned notification of 10.09.2018 which in continuation of the earlier notification of 07.05.2018, the notification which has been scrutinized till the apex court and now sub-judice before the apex court in review jurisdiction vide C.R.P No. 746 to 755 of 2019, is essentially, similar in nature to that of 7th May 2018, therefore, challenging the impugned notification is meant to involve the government as well as private respondents to un-necessary, protracted and unwanted litigation and thus, to re-agitate a decided issue afresh and thus, prevent the private respondents from the due role which they are legitimately doing since a decade.

14. That all the respondents are inducted in the management cadre after adopting all the codal formalities issued by the competent authority and meritoriously performing their duties at their designated stations. In addition to the above, the department has still vacant post in management cadre.

15. Similarly, during the process of induction under Rule 10 *ibid*, some junior doctors were inducted/ transferred at earlier stage whereas their seniors were inducted/ transferred into management cadre at later stage. Their inter se seniority was determined in terms of Section-8 of KP Civil Servant Act, 1973 & Rule 17 of the KP Appointment, Promotion and Transfer Rules, 1989 as evident from the impugned notification. Thus, the appellant has no cause of action against the private respondents.

16. Furthermore, the petitioners have no locus standi and cause of action, as neither any legal rights of the petitioner has been violated nor illegality has been committed during the entire process whatsoever. Thus, in such view of the matter, the case in hand is not maintainable in its present form, before this hon'ble tribunal.

17. As a matter of fact, the exercise of option as one time exercise as per rule-10 ibid remained shrouded due to un-necessary, un-wanted and protracted litigation which adversely affected the very object of the Government by introducing separate/ specialized (management) cadre for better service delivery as not only huge expenses have been incurred on imparting management training to the private respondents but also the answering respondents are under legitimate expectation to continue as member of the Management Cadre. Similarly, the positions of both General/ Management Cadres have recently been up-graded/ promoted and their names have been struck down from their seniority list as maintained by the General Cadre. Therefore, even otherwise, any decision in the instant appeal, favorable to the appellant, will lead to illogical consequences.

Annex-K

REPLY ON FACTS:

1. No Comments. However, rule 10 has temporary superseding powers as evident from its commencing words that "Notwithstanding anything contained in the Provision of these Rules." Hence, the purpose behind as appearing from the commencing words, is to fill all the vacant posts in Management Cadre from the one serving in the general cadre. Therefore, Rule 4 read with schedule II remain inactive till such time the exercise of option for induction/ transfer into management cadre has been exercised by the qualified Doctor of General cadre. As stated in above para that exercising of option ended on 09.05.2019 in compliance with the judgments of the Tribunal/ Apex Court. Beyond 09.05.2019 rule 10 has now become redundant due to which rule 4 has become alive/ in operation, while the appellant along with similarly placed, were recruited in terms of Rule-4 before complying the procedure of Rule-10. The relevant rule is reproduced herein-below for easy reference;

"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 and 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)

2. Para 2 is misleading. In order to implement the judgments (the judgment of this hon'ble tribunal as upheld by the august Supreme Court of Pakistan), Health Department proposed the following actions, which, after due endorsement of the regulatory department of Law & Establishment and approval of the worthy Chief Minister Khyber Pakhtunkhwa, were implemented;

- i. Amending Rule-10 of the Management Cadre Rules to provide, with immediate effect, 2-years period to all in-service doctors to improve their qualifications/ obtain qualification provided for lateral induction in Management Cadre and, on expiry of 2-years period in 2019 give notice, through wide publicity as a one-time exercise for such doctors to give their option to join the Management Cadre in accordance with Rule-10; in this regard a meeting of SSRC was held under the Chairmanship of Secretary Health Department on 10.03.2017 on the captioned subject. The meeting was attended by the representative of Finance, Establishment Department, wherein the following addition in Rule-10 was agreed upon unanimously along with further amendments in Schedule-III appended to the Health Management Cadre Rules 2008 and notified in the official gazette after due approval of the competent authority:

“Provided further that for a period of two years from the date of this Notification, the officers of 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.”

- ii. Give notice vide publicity, for exercise of option by all such doctors who have, as of that day, obtained qualification provided for lateral induction in Management Cadre to join the Management Cadre and consequently induct them under Rule-10 as one-time exercise with immediate effect. Notice was published in newspapers too.
- iii. Subsequent thereto, a list of doctors in General Cadre holding substantive positions of General Cadre was submitted vide Summary to the worthy Chief Minister for approval which was returned on the objection of Establishment Department. However, the department submitted yet another (Revised) Proposal for approval which was approved by the worthy Chief Minister. Thus, the Notification of 10.09.2018 was issued accordingly.

(Copy of Summary to Chief Minister & Decision on Departmental Appeal of Dr. Sahib Gul & Others, dated. 25.05.2018 is Annex-9)

3. Correct. However, rule 10 has temporary superseding powers as evident from its commencing words that *“Notwithstanding anything contained in the Provision of these Rules.”* Hence, Rule 4 read with schedule II remain inactive till such time the exercise of option for induction/ transfer into management cadre has been exercised by the qualified Doctor of General cadre. As stated in above para that exercising of option ended on 09.05.2019 in compliance with the judgments of the Tribunal/ Apex Court. Beyond 09.05.2019 rule 10 has now become redundant due to which rule 4 has become alive/ in operation. This undoubtedly questions the appointment of appellant.



a i. Para 4 is misleading. The rules were initially impugned by one Dr. Sher Muhammad before the Hon'ble Peshawar High Court vide Writ Petition No. 2382/2009, however, the petitioner was directed to approach this hon'ble tribunal by treating their writ petition as departmental appeal. For implementing the decision, the petitioner again approached the Hon'ble Peshawar high Court in CoC No. 10/2010 which was again disposed of as the petitioner could approach this tribunal after the expiry of 90-days. Accordingly, Dr. Sher Muhammad filed Appeal No. 513/2010 before this Hon'ble Tribunal. This hon'ble tribunal vide judgment dated 03.01.2012 passed the following order;

"The tribunal observe 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) Services 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 qualification for posting in the management cadre posts but only provide them a cushion period and if they acquire the requisite qualification within two years from the date of decision, they may opt and join management cadre without effecting their seniority/ service.

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."

ii. The aforesaid judgment was further challenged by the official as well as private respondents in C.A No. 320-324 & 126-130 of 2012 in the



Hon'ble Supreme Court of Pakistan. The Hon'ble Supreme Court vide interim order dated. 03.04.2012 suspended the judgment of the KP Service Tribunal. The interim order remained intact till final decision of the Apex Court vide judgment dated. 03.11.2016 which is reproduced as under;

"There seems to be hardly any reason muchless justifiable to interfere with the impugned judgment of the Tribunal moreso on the grounds urged by the learned ASC for the appellants. The Civil Appeal No. 320 to 324 of 2012 are therefore, dismissed."

- iii. In view of the aforesaid judgments and suspension order dated. 03.04.2012 of the august Supreme Court, Rule 10 of the KP Health (Management) Service Rules 2008 was amended by adding second proviso on 10.05/2017 for providing two years cushion period for induction into management cadre which ended on 09.05.2019. in view of the judgment of this hon'ble tribunal on 03.01.2012, the cushion period would have ended on 02.01.2014, however, due to suspension of the judgment by the apex court vide interim order dated. 03.04.2012, rule. 10 of the said rules remained shrouded however, on dismissal of the appeals by the Apex Court on 03.11.201, new proviso was inserted to Rule-10 on 10.05.2017, the cushion period remained operational till 09.05.2019. therefore, the judgment of this hon'ble tribunal would have attain finality on 02.01.2014 if its operation had not been suspended by the apex court till its decision arrived on 03.11.2016. The department action regarding implementing the judgments attains finality on 09.05.2019. In other words, one-time exercise of induction took place from 11.12.2008 and has ended on 09.05.2019 which will legally cover all inductions in the intervening periods.

(Copy of Suspension Order dated. 03.04.2012 is Annex-III)

4. As explained in the preceding paras. However, it is added that not only the department has still sufficient positions vacant as reiterated in the revised proposal. **Para 27** of the proposal is reproduced herein-below;

S. No	BPS	Sanctioned	Filled	Vacant
1.	BPS-18	295	10	285
2.	BPS-19	159	86	73
3.	BPS-20	38	30	08

Similarly, it was further clarified in **para 36** of the Revised Proposal that the 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. Therefore, such induction by way of permanent transfer by no mean would affect the appellant.

- 5. As explained in the preceding paras.
- 6. Correct.
- 7. As explained in the preceding paras.
- 8. At the cost of repetition, it is reiterated again that as a result of protracted and unwanted litigation, although this tribunal provided a cushion period of two years in its judgment dated 03.01.2012, however, the said judgment when assailed before the Apex Court, the Hon'ble Supreme Court of Pakistan suspended the operation of the above judgment on 03.04.2012 which remained intact till the final decision of all the appeals till 03.11.2016. In view of above, the right of option as allowed by this tribunal, remained shrouded till the final outcome on 03.11.2016. subsequent insertion to Rule-10 vide Notification dated. 10.05.2017, was in fact, implementing the above decisions of this hon'ble tribunal and the Apex Court. Therefore, permanent absorption by way of transfer remained operational from 2008 till 09.05.2019. More so, the true manifestation of Health Management Service Rules 2008 as evident from commencing words of Rule-10, clearly

mandates that Rule-4 would become alive once the process in Rule-10 is completed.

9. As explained in the preceding paras.

10. As the question of inter se seniority has been dealt with by these rules and as the law is explicit and clear therefore, the cited judgment would not be attracted to the facts of instant appeal. Hence, this para is overwhelmingly denied.

11. Incorrect. The detailed has been sufficiently explained in the preceding paras.

12. Incorrect. No illegality has been committed to the appellant. Furthermore, the ill-intentions of the appellant is manifested from his protracted and un-wanted litigation whereby, the present appellant has filed another constitutional petition against the same respondent on same cause vide his Writ Petition No. 3223-P/2020. The said petition was dismissed on the ground that he has already filed similar petition (instant appeal) on same ground. It is pertinent to mention here that the appellant has not only challenged the impugned notification but also the notification of 07.05.2018 which was adequately been decided by this court and appeal there against was also dismissed by the apex court.

(Copy of WP No. 3223-P/2020 and Judgment is Annex-D)

THEREFORE, in view of above it is most humbly prayed that this appeal may kindly be dismissed with exemplary Costs.

K Hayt

Respondents

Through

Habibanwar

**HABIBANWAR
Advocate High Court, Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR


In Re: Service Appeal No. 209/2019.

Dr. Fahad Iqbal VERSUS Government of KPK and Others

AFFIDAVIT

I Dr. KHIZAR HAYAT DIR MCH DGHS PESHAWAR

Peshawar, do hereby solemnly affirm and declare on Oath that the contents of Reply/ Comments are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this honorable tribunal.

[Handwritten Signature]
30-0-22


DEPONENT

[Handwritten Signature]

CNIC No. 17301-1371229-3

Cell No. 03149029065

11.05.2022

Appellant with counsel present.



Muhammad Adeel Butt, learned Additional Advocate General alongwith Safi Ullah S.O for official respondents No.1 & 2 present. Habib Anwar Advocate on behalf of private respondents No.5, 6, 9, 10, 11, 14, 15, 19, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 35, 4, 44, 47, 49, 50, 52, 54, 58 and 59 present. Nazir Ahmad Advocate on behalf of private respondents No.4, 51 and 55 present. All the remaining respondents being absent, are proceeded ex-parte. Attendance is complete. Reply on behalf of official respondents No.1 & 2 and private respondents No.4, 51 & 55 submitted. Habib Anwar Advocate requested for time in order to submit reply/comments on behalf of private respondents No. 5, 6, 9, 10, 11, 14, 15, 19, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 35, 4, 44, 47, 49, 50, 52, 54, 58 and 59. Last chance is given for submission of reply, failing which, their right of defense would be deemed as struck off. To come up for reply/comments of private respondents No. 5, 6, 9, 10, 11, 14, 15, 19, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 35, 4, 44, 47, 49, 50, 52, 54, 58 and 59 on 10.06.2022 before S.B.

(Rozina Rehman) Member (J)

Certified to be true copy
Khyber Pakhtunkhwa
Islamabad

10.06.2022

Appellant in person present.

Muhammad Riaz Khan, Paindakheil, learned Assistant Advocate General for respondents present.

Perusal of preceding order sheet would reveal that reply on behalf of official respondents NO.1 & 2 and private respondents No.4, 51 and 55 was submitted. A request for adjournment was sought on behalf of private respondents mentioned in detail in the preceding order sheet dated 11.05.2022. Today they are not in attendance despite last chance for submission of reply, therefore, all are proceeded ex-parte. Attendance is complete. Reply has already been submitted on behalf of remaining respondents, therefore, case is adjourned for arguments to 30.08.2022 before D.B

(Rozina Rehman) Member (J)

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10-07-2022
10-08-2022
29-8-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 209 /2019



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 163

Dated 08-02-2019

Dr. Fahad Iqbal
Son of Muhammad Iqbal
Officer of Health Service Management Cadre (BPS-17)
Government of Khyber Pakhtunkhwa Peshawar

.....APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary
Civil Secretariat Peshawar

2. The Secretary Health
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar

Ex-parte (3) Khan Bahadar s/o Gul Akbar (BS-19)

✓ 4. Muhammad Usman Shah s/o Muhammad Zahir Shah (BS-18)

Medto-day Shiraz Ahmad s/o Rashid Ahmad (BS-18)

Registrar 6. Shafqatullah s/o Amir Hamza (BS-17)

(7) Fayyaz Ali Roomi s/o Humayun Roomi (BS-17)

(8) Muhammad Javed Khan s/o Shah Zaman Khan (BS-20)

✓ 9. Syed Gul Hussain Syed s/o Syed Shah Jehan (BS-18)

✓ 10. Wasiullah s/o Shakirullah (BS-18)

✓ 11. Jameel Ahmad s/o Abdullah (BS-18)

Ex-parte (12) Farman Ali s/o Muhammad Naseem (BS-18)

Re-submitted to -day
and filed.

REGISTERED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



**Peshawar High Court
Bar Association**

Office:
Peshawar High Court
Building, Peshawar.

Contact: 92-91-9210122
92-91-7081032
Website: www.phcbs.org
phcbapesh@gmail.com

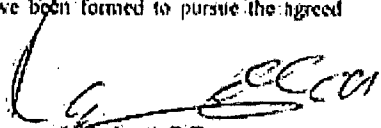
Ref No/PRE/PHCBA/21/2022

Date 08-06-2022

RESOLUTION

An Emergency Meeting was called by the Peshawar High Court Bar Association on 08-06-2022 in New Bar Room (Peshawar High Court) at 2 PM over the issue of Syed Ghuran Ullah Shah, ASC. The meeting was attended by the worthy members of Pakistan Bar Council, Vice Chairman KP Bar Council, Members KP Bar Council from Peshawar, Swabi, Kohat and Mardan. Similarly the meeting was attended by President District Bar Association Peshawar, Charsadda, Mardan, Kohat, Nowshera, Swabi, Khyber and Molmand. The Presidents of Tehsil Bar Associations Chota Lahor, Tangi, Shabqadar and Katlang also participated in the meeting. Besides, the secretaries of all the respective Bar Associations also attended the emergency meeting. In presence of all the above respected members, the following resolutions unanimously passed:

1. Arrest of accused Aftab Ahmad, AAC along with other culprits mentioned in FIR No. 852.
2. Suspension from services of accused Aftab Ahmad AAC and his security staff involved in above mentioned FIR.
3. Speedy Judicial inquiry of the said incident and removal / dismissal from service.
4. Complete strike has been called on 9th June 2022 till 11th June 2022 at all the principal seats of Khyber Pakhtunkhwa. Furthermore, the decision of strike onward 11th June 2022 will be taken by the Tehreek Committee.
5. All Pakistan Lawyer's Convention will be held in Peshawar High Court at Principle Seat.
6. Condemn the role played by Provincial Government, as well as Advocate General in the prevailing scenario and protection of AAC Aftab Ahmad and his security guards (Police Officials).
7. Condemn the role of local police District Manselara for arrest of Munir Hussain Lughmani Advocate.
8. Condemn the Lathi Charge over students of Islamia Law College / Khyber Law College by the campus police.
9. Condemn the misbehaviour of Assistant Commissioner Charsadda with Hajra Advocate.
10. Appreciate the role of Provincial Doctors Association, Trades Association, Teachers Association, Islamia Law College, Khyber Law College, University of Peshawar etc who support the cause of our movement.
11. Various committees including Negotiation Committee have been formed to pursue the agreed agenda of the meeting held on 08.06.2022.


Rahman Ullah, ASC
President, PHCBA

PRESIDENT
High Court Bar Association
Peshawar.

854 Annex - B

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Present:
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE AMIN-UD-DIN KHAN

C.R.P. Nos. 746 to 755 of 2019 in
C.P. Nos. 2048 to 2057 of 2019

Dr. Muhammad Shoaib & others ...Petitioner(s)
(in all cases)

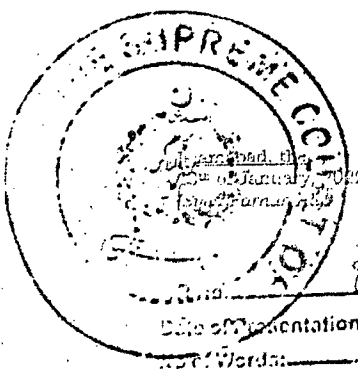
Versus

Government of Khyber Pakhtunkhwa thr. ...Respondent(s)
Chief Secretary, Khyber Pakhtunkhwa,
Peshawar & others (in all cases)

Petitioner(s): Dr. Shoaib, Dr. Salem & Dr. Amir
For the Respondent(s): Mian Shafqat Jan, Addl. AG KP
Zia Ullah, Dy. Secy. Health
Date of Hearing: 13.01.2022

ORDER

Petitioners in person submit that they had opted for the Health Management Cadre and have referred to a letter dated 03.07.2009 issued by the Executive District Officer (Health) Mardan (placed at page No. 209 of the file). This aspect of the matter has not been considered before the Tribunal or before this Court earlier. Let notice be issued to the respondents. To be fixed in the next month i.e. February 2022.



Sd/-J
Sd/-J
Certified to be True Copy
Senior Court Associate
Supreme Court of Pakistan
Islamabad

854/22 Civil/Criminal
Date of presentation: 13-1-22
No. of Pages: 300
No. of Folios: 37
Registration Fee Rs. 5.00
Copy Fee Int: 1.86
Court Fee Stamp: 6.86
Date of Completion of Copy: 15/1/22
Date of Delivery of Copy: 15/1/22
Compared by/Prepared by: [Signature]

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Annex-E

23

Peshawar dated the 11th February, 2022.

No.SOH (E-V)/4-4/Management Service Rules, 2008/2022/ 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 Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, the following further amendments shall be made, namely:

AMENDMENTS

1. In rule 4, the existing provision shall be numbered as sub-rule (1) of rule 4 and after sub-rule (1) as so renumbered, the following new sub-rule shall be added, namely:

“(2) Notwithstanding anything contained in sub-rule (1), in cases where no suitable officer amongst the members of Service is available for appointment against any post mentioned in Schedule-I, the respective appointing authority, under rule 17 of the Khyber Pakhtunkhwa Government Rules of Business, 1985, may post any suitable doctor from amongst the General Cadre doctors, having equivalent pay scale, to such post:

Provided that the General Cadre doctors so posted shall hold office during the pleasure of the respective appointing authority:

Provided further that the respective appointing authority may also consider one grade lower candidate for any position in the Management Cadre on his own pay scale.

(3) For the purpose of sub-rule (2), the Health Department, if deemed appropriate, may determine any criteria and/ or mechanism for recommending to the relevant appointing authority, for their posting to a position in the Management Cadre.”.

2. In rule 5, for the acronym and figure “BS-17”, the acronym and figure “BS-18” shall be substituted.
3. In rule 6, for the acronym and figure “BS-17”, the acronym and figure “BS-18” shall be substituted.
4. For Schedule-I, the following shall be substituted, namely:

Section Officer (VY)
Health Department
Khyber Pakhtunkhwa

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GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: CIVIL APPEAL NO 320-324 OF 2012 AND CIVIL APPEAL NO 126-P TO 130-P OF 2013 GOVT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT VERSUS DR.SHER MUHAMMAD AND OTHERS

Refer Para- 1 to 21/Summary.

22. The option for induction into the Health Management Cadre was widely published in daily Newspapers and cushion period was given to the officers of the General Cadre to improve their qualification enabling them to opt the Management Cadre (**Annex-IX**). Consequent upon the circular of cushion period, the following officers of the General Cadre holding substantive positions of the General Cadre, opted for the Health Management Cadre. Their Degrees and other paraphernalia were verified. Detail is given below (**Annex-X**):-

S.NO.	NAME OF DOCTOR	FATHER NAME.	DATE OF JOINING SERVICE ON REGULAR BASIS
1.	Dr.Muhammad Saleem BS-19	Inayat-Ur-Rehman	11.03.1999
2.	Dr.Muhammad Ismail BS-17	Said Muhammad	07.09.2007
3.	Dr.Shahid Mehmood BS-18	Sardar Muhammad Aslam	07.09.2007
4.	Dr.Muhammad Mustafa Alam BS-18	Nasrullah Jan	23.7.2005
5.	Dr.Khalilur Rehman BS-18	Ali Rehman	23.7.2005
6.	Dr.Muhammad Shuaib, BS-19	Muhammad Ajab	30.12.1987
7.	Dr.Muhammad Munib BS-18	Sher Ali Khan	23.7.2005
8.	Dr.S.Muhammad Taimur Shah BS-18	Pir Ferooz Shah	23.7.2005
9.	Dr.Firdos Jabeen BS-18	Muhammad Aslam Khan	23.7.2005
10.	Dr.Kalimullah Khan BS-19	Eid Gul.	15.9.1997
11.	Dr.Niaz Muhammad BS-18	Dost Muhammad	23.7.2005
12.	Dr.Zafr Ullah Khan BS-18	Ghulam Sarwar	15.9.1997
13.	Dr.Saeed ur Rehman BS-18	Haji Fazli Rehman	23.7.2005
14.	Dr.Aamir Israr BS-18	Irsar Muhammad Khan	16.9.2000
15.	Dr.S.Shaida Hussain Shah Bukhari BS-18	S. Fida Hussain Shah Bukhari	23.7.2005
16.	Dr.Muhammad Shafiq BS-18	Akbar Gul	23.7.2005
17.	Dr.Muhammad Rahim BS-19	Gul Rahim	23.7.1988
18.	Dr.Mushtaq Ahmad BS-18	Fazal Khan	7.9.2007
19.	Dr.Shabnum Khawas BS-17	Lal Khawas Khan	4.9.2012
20.	Dr.Ahmad Tariq BS-17	Tariq Tanveer	3.6.2016
21.	Dr.Khan Askar BS-18	Muhammad Askar	15.9.1997
22.	Dr.Faisal Malik BS-17	Fazli Malik Sarim	20.3.2015
23.	Dr.Bilal Bahrawar Khan BS-17	Bahrawar Khan	3.6.2016
24.	Dr.Tanveer Inam BS-17	Inamullah	3.6.2016

26.	Dr.Alamgir Khan BS-18	Darwesh Khan	23.7.2005
27.	Dr.Majid Khan BS-17	Muhammad Humayun Khan	3.6.2016
28.	Dr.Ihsanullah BS-19	Ghulam Muhammad	27.11.1998
29.	Dr.Aurangzeb Afridi BS-18	Ghulam Hussain Afridi	23.7.2005
30.	Dr.Shafiul Mulk BS-19	Hazrat Mulk Khan	27.11.1998
31.	Dr.Muhammad Khalil Akhtar BS-18	Muhammad Yousaf Khan	15.9.1997
32.	Dr.Farhad Khan BS-18	Purdil Khan	28.5.1997
33.	Dr.Muhammad Farid BS-18	Khaista Azam	23.7.2005
34.	Dr.Aamir Rafiq Khattak BS-18	Muhammad Rafiq Khattak	23.7.2005
35.	Dr.Jehanzeb Khan BS-19	Ihsanullah Khan	14.4.1992
36.	Dr.Alif Jan BS-18	Amir Jan	24.10.2009
37.	Dr.Makhdoom Safdar BS-17	Safdar Hussain Awan	3.6.2016
38.	Dr.Shumaila Malik BS-17	Malik Farid Khan	20.3.2015
39.	Dr.Muhammad Kamal BS-18	Muhammad Sharif Khan	23.7.2005
40.	Dr.Noor Saeed Khan BS-19	Muhammad Saeed Khan	27.11.1998
41.	Dr.Aziz Khan BS-18	Jaffar Khan	23.7.2005
42.	Dr.Ghulam Rasool Khan BS-19	Shadi Gul Khan	9.12.1991
43.	Dr.Muhammad Iqbal Javed BS-20	Fatehullah Khan	12.8.2000
44.	Dr.Kamran Zakria BS-18	Ghulam Zakria Khan	28.10.2011
45.	Dr.Sheikh Muhammad Farooq Azam BS-17	Sheikh Muhammad Bashir Gohar	23.7.2005
46.	Dr.Naimatullah Zia BS-19	Amir Shah	6.12.1987
47.	Dr.Muhammad Israrul Haq BS-17	Abdur Rashid Khan	8.6.2017
48.	Dr.Qasim Abbas BS-18	Saifur Rehman	24.10.2009
49.	Dr.Muhammad Hayat BS-17	Haji Akbar Gul	20.3.2015
50.	Dr.Muhammad Ibrahim Khan BS-18	Abdul Halim Khan	7.9.2007
51.	Dr.Sheraz Ahmad Khan SB-17	Muhammad Akram Khan	9.5.2017
52.	Dr.Adnan Khan BS-17	Muhammad Zahir Shah	12.8.2016
53.	Dr.Syed Ijaz Ali Shah BS-18	Syed Abdul Qayum Shah	16.09.2000
54.	Dr.Fazal Majeed BS-17	Muhammad Aslam	2.2005
55.	Dr.Muhammad Bilal Khan BS-17	Muhammad Daud	23.07.2005
56.	Dr.Majid Saleem BS-17	Allah Dad Khan	9.9.2016
57.	Dr.Fazal Qayum BS-17	Abdur Rehman	20.03.2015
58.	Dr.Ali Asghar Khan BS-18	Abdul Akbar Khan	24.10.2009
59.	Dr.Muhammad Azhar Shah BS-17	Israr ul Arifin	23.07.2005
60.	Dr.Saira Jabeen Shah BS-17	Amt Ali Shah	04.09.2012
61.	Dr.Roshan Zada BS-18	Said Latif	07.09.2007
62.	Dr.Javid Iqbal BS-19	Amir Bahadar	27.11.1998
63.	Dr.Shaima Malik BS-17	Fazli Malik Sarim	27.10.2011
64.	Dr.Pirzada BS-17	Bahadar	20.3.2015
65.	Dr.Shahab Ahmad BS-19	Abdur Rehman	27.11.1998
66.	Dr.Muhammad Dost Khan BS-18	Zahir Gul	23.07.2005

69.	Dr. Tariq Hayat BS-17	Fazal Hayat Taj	3.6.2016
70.	Dr. Muhammad Sohail Farooqi BS-17	Muhammad Aqeel Farooqi	20.03.2015
71.	Dr. Abdul Waheed BS-19	Abdul Hameed	15.9.1997
72.	Dr. Hafizullah Khan BS-17	Amanullah Khan	4.9.2012
73.	Dr. Zakir Hussain BS-18	Hakim Khan	23.7.2005
74.	Dr. Qazi Sabihuddin BS-19	Qazi Ghulam Mustafa	31.7.1993
75.	Dr. Ijaz Ahmad BS-17	Bashir Ahmad	23.7.2005
76.	Dr. Sher Muhammad BS-20	Shah Muhammad	19.3.1987
77.	Dr. Wakeel Muhammad BS-20	Taj-ul-Malook	19.03.1987
78.	Dr. Suffian Khan BS-17	Muhammad Tanveer	26.5.2017
79.	Dr. Muhammad Naeem BS-18	Habibullah Khan	7.9.2007
80.	Dr. Ikramullah BS-20	Amanullah Khan	14.03.1987
81.	Dr. Muhammad Shoaib BS-18	Azizur Rehman	16.09.2000

23. In view of the above, the Chief Minister Khyber Pakhtunkhwa is requested to induct the officers of the General Cadre mentioned in Para-22 into the Health Management Cadre under the amended Rule-10 of the Management Cadre. Their inter se seniority will be determined 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.

M. A. M.
13 Feb 18
(Muhammad Abid Majeed)
Secretary Health.

Secretary Establishment
Khyber Pakhtunkhwa.


Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa.

24. The subject case has been examined. Health Department vide Para-22 of the summary has proposed 81 doctors of General Cadre to be inducted in the Management Cadre.

- i. However, the number of General Cadre doctors who have submitted their verified degrees of additional qualification is 79. (Flag-A). Health Department may clarify the position of doctors at S.No.80 & 81 at Para-22 of the summary who have not submitted their additional requisite qualification.
- ii. Administrative Department may also clarify the vacant posts in the Management Cadre against which the proposed doctors of General Cadre may be inducted in the Management Cadre.

25. Summary is returned to Health Department.


(ARSHAD MAJEED)
Secretary Establishment
February 22, 2018

~~Secretary Health~~





GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: CIVIL APPEAL NO 320-324 OF 2012 AND CIVIL APPEAL NO 126-P TO 130-P OF 2013 GOVT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT VERSUS DR.SHER MUHAMMAD AND OTHERS

Refer Para 24 and 25/Summary.

26. Revised proposal in respect of the doctors of the General Cadre for induction into the Health Management Cadre are as under:-

S.#	NAME OF DOCTOR	FATHER NAME.	DATE OF JOINING SERVICE ON REGULAR BASIS
1.	Dr.Muhammad Saleem BS-19 ✓	Inayat-Ur-Rehman	11.03.1999
2.	Dr.Muhammad Ismail BS-18	Said Muhammad	07.09.2007
3.	Dr.Shahid Mehmood BS-18	Sardar Muhammad Aslam	07.09.2007
4.	Dr.Muhammad Mustafa Alam BS-18	Nasrullah Jan	23.7.2005
5.	Dr.Khalilur Rehman BS-18	Ali Rehman	23.7.2005
6.	Dr.Muhammad Shuaib, BS-20	Muhammad Ajab	30.12.1987
7.	Dr.Muhammad Munib BS-18	Sher Ali Khan	23.7.2005
8.	Dr.S.Muhammad Taimur Shah BS-18	Pir Ferooz Shah	23.7.2005
9.	Dr.Firdos Jabeen BS-18	Muhammad Aslam Khan	23.7.2005
10.	Dr.Kalimullah Khan BS-19 ✓	Eid Gul.	15.9.1997
11.	Dr.Niaz Muhammad BS-18	Dost Muhammad	23.7.2005
12.	Dr.Zafr Ullah Khan BS-19	Ghulam Sarwar	15.9.1997
13.	Dr.Saeed ur Rehman BS-18	Haji Fazli Rehman	23.7.2005
14.	Dr.Aamir Israr BS-18	Irsar Muhammad Khan	16.9.2000
15.	Dr.S.Shaida Hussain Shah Bukhari BS-18	S. Fida Hussain Shah Bukhari	23.7.2005
16.	Dr.Muhammad Shafiq BS-18	Akbar Gul	23.7.2005
17.	Dr.Muhammad Rahim BS-19 ✓	Gul Rahim	23.1.1988
18.	Dr.Mushtaq Ahmad BS-18	Fazal Khan	7.9.2007
19.	Dr.Shabnum Khawas BS-17	Lal Khawas Khan	4.9.2012
20.	Dr.Ahmad Tariq BS-17	Tariq Tanveer	3.6.2016
21.	Dr.Khan Askar BS-19	Muhammad Askar	15.9.1997
22.	Dr.Faisal Malik BS-17	Fazli Malik Sarim	20.3.2015
23.	Dr.Bilal Bahrawar Khan BS-17	Bahrawar Khan	3.6.2016
24.	Dr.Tanveer Inam BS-17	Inamullah	3.6.2016
25.	Dr.Muhammad Saleem Khan BS-19	Fazal Rahim Khan	23.01.1988
26.	Dr.Alamgir Khan BS-18	Darwesh Khan	23.7.2005
27.	Dr.Majid Khan BS-17	Muhammad Humayun Khan	3.6.2016
28.	Dr.Ihsanullah BS-19	Ghulam Muhammad	27.11.1998
29.	Dr.Aurangzeb Afridi BS-18	Ghulam Hussain Afridi	23.7.2005
30.	Dr.Shafiul Mulk BS-19	Hazrat Mulk Khan	27.11.1998

32.	Dr. Farhad Khan BS-19	Purdil Khan	28.5.1997
33.	Dr. Muhammad Farid BS-17	Khaista Azam	23.7.2005
34.	Dr. Amir Rafiq Khattak BS-18	Muhammad Rafiq Khattak	23.7.2005
35.	Dr. Jehanzeb Khan BS-19	Ihsanullah Khan	14.4.1992
36.	Dr. Alif Jan BS-18	Amir Jan	24.10.2009
37.	Dr. Makhdoom Safdar BS-17	Safdar Hussain Awan	3.6.2016
38.	Dr. Shumaila Malik BS-17	Malik Farid Khan	20.3.2015
39.	Dr. Muhammad Kamal BS-18	Muhammad Sharif Khan	23.7.2005
40.	Dr. Noor Saeed Khan BS-19	Muhammad Saeed Khan	27.11.1998
41.	Dr. Aziz Khan BS-18	Jaffar Khan	23.7.2005
42.	Dr. Ghulam Rasool Khan BS-19	Shadi Gul Khan	9.12.1991
43.	Dr. Muhammad Iqbal Javed BS-20	Fatehullah Khan	06.12.1987
44.	Dr. Kamran Zakria BS-18	Ghulam Zakria Khan	28.10.2011
45.	Dr. Sheikh Muhammad Farooq Azam BS-18	Sheikh Muhammad Bashir Gohar	23.7.2005
46.	Dr. Naimatullah Zia BS-19	Amir Shah	6.12.1987
47.	Dr. Muhammad Israrul Haq BS-17	Abdur Rashid Khan	8.6.2017
48.	Dr. Qasim Abbas BS-18	Saifur Rehman	24.10.2009
49.	Dr. Muhammad Hayat BS-17	Haji Akbar Gul	20.3.2015
50.	Dr. Muhammad Ibrahim Khan BS-18	Abdul Halim Khan	7.9.2007
51.	Dr. Sheraz Ahmad Khan SB-17	Muhammad Akram Khan	9.5.2017
52.	Dr. Adnan Khan BS-17	Muhammad Zahir Shah	12.8.2016
53.	Dr. Syed Ijaz Ali Shah BS-18	Syed Abdul Qayum Shah	16.09.2000
54.	Dr. Fazal Majeed BS-18	Muhammad Aslam	2.2005
55.	Dr. Muhammad Bilal Khan BS-17	Muhammad Daud	23.07.2005
56.	Dr. Majid Saleem BS-17	Allah Dad Khan	9.9.2016
57.	Dr. Fazal Qayum BS-17	Abdur Rehman	20.03.2015
58.	Dr. Ali Asghar Khan BS-18	Abdul Akbar Khan	24.10.2009
59.	Dr. Muhammad Azhar Shah BS-17	Israr ul Arifin	23.07.2005
60.	Dr. Saira Jabeen Shah BS-17	Amit Ali Shah	04.09.2012
61.	Dr. Roshan Zada BS-18	Said Latif	07.09.2007
62.	Dr. Javid Iqbal BS-19	Amir Bahadar	27.11.1998
63.	Dr. Shaima Malik BS-17	Fazli Malik Sarim	27.10.2011
64.	Dr. Pirzada BS-17	Bahadar	20.3.2015
65.	Dr. Shahab Ahmad BS-19	Abdur Rehman	27.11.1998
66.	Dr. Muhammad Dost Khan BS-18	Zahir Gul	23.07.2005
67.	Dr. Muhammad Riaz BS-18	Gohar Khan	23.07.2005
68.	Dr. Kashmir Khan BS-19	Aslam Khan	9.12.1991
69.	Dr. Tariq Hayat BS-17	Fazal Hayat Taj	3.6.2016
70.	Dr. Muhammad Sohail Farooqi BS-17	Muhammad Aqeel Farooqi	20.03.2015
71.	Dr. Abdul Waheed BS-19	Abdul Hameed	15.9.1997
72.	Dr. Hafizullah Khan BS-17	Amanullah Khan	4.9.2012
73.	Dr. Zakir Hussain BS-18	Hakim Khan	23.7.2005

76.	Dr. Sher Muhammad BS-20	Shah Muhammad	19.3.1987
77.	Dr. Wakeel Muhammad BS-20	Taj-ul-Malook	19.03.1987
78.	Dr. Suffian Khan BS-17	Muhammad Tanveer	26.5.2017
79.	Dr. Muhammad Naeem BS-18	Habibullah Khan	7.9.2007
80.	Dr. Ikramullah BS-20	Amanullah Khan	14.03.1987
81.	Dr. Muhammad Shoaib BS-18	Azizur Rehman	16.09.2000
82.	Dr. Muhammad Riaz Tanoli BS-18	Said Ozar	23.10.2000
83.	Dr. Inayatullah Khan BS-18	Saifullah Khan	07.09.2007
84.	Dr. Wazir Khan BS-18	Rookam Khan	07.09.2007
85.	Dr. Uzama Jabeen BS-18	Taj Muhammad	23.07.2005
86.	Dr. Dildar Khan BS-18	Abdul Ghaffar	14.02.2005
87.	Dr. Mohsin Ahmad BS-18	Taj Muhammad Khan	26.11.1995
88.	Dr. Abbas Khan (BS-18)	Ajab Khan	28.11.1995

27. Moreover the detail of the vacant positions of the Management Cadre is as under:-

S.No.	BPS	Sanctioned	Filled	Vacant
1.	BPS-18	295	10	285
2.	BPS-19	159	86	73
3.	BPS-20	38	30	08

28. Para-23 and 26 of the summary is submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.

(Signature)
 (Muhammad Abid Majeed)
 Secretary Health.

Secretary Establishment
Khyber Pakhtunkhwa.

Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa.

29. Case has been examined. The doctors of the General Cadre were allowed to opt for the Management Cadre on the condition of some specific higher qualifications vide Health Management Service Rules, 2008 but without giving them enough time. Some doctors approached the Service Tribunal against the policy and the Tribunal directed to allow the petitioners to improve their qualifications within 2 years of the announcement of the judgement to qualify for exercising option. The cut off date for improving qualifications thus happened to be 3.1.2014. However, in CPLA, the judgement ibid was suspended by the Apex Court and finally upheld vide order dated 3.11.2016.

30. An amendment was made in the relevant Rule on 10th May, 2017 allowing 2 years cushion period for improvement of qualifications.

31. The following points need legal scrutiny:

- i. Tribunal allowed this space to the petitioners (we may even include others similarly placed i.e those in service on the day of Tribunal judgement dated 31.1.2012). The amendment to the rule was made on 10th May, 2017 giving two years to improve qualifications which is in conflict with the spirit of the judgement allowing 2 years time from the date of decision. The issue thus is to who is to benefit- the petitioners and those similarly placed, or even others in the light of the amendment. The Administrative Department, in its summary, let it be pointed out included the doctors who joined in 2017. Shall the amendment apply exclusively to the petitioners (and those in service on the day of Service Tribunal judgement) or extend to those improving qualifications within 2 years of the amendment.
- ii. The advertisement is in sharp contrast to the amendment in that the latter allows 2 years period for improvement in qualification from the date of amendment while the advertisement stipulates one month space for submitting options with required qualification.
- iii. On joining the Management Cadre, their seniority will be counted from the date of their joining in the Management Cadre not from any earlier date. Similar direction has been passed at para-2 of the Supreme Court of Pakistan Judgement placed vide Annex-IV

32. The Chief Minister, Khyber Pakhtunkhwa before approving the proposal contained at para-28 of the summary may like to direct the Health Department to prepare a case in light of the observations/ points raised at para-31 above.

(ARSHAD MAJEED)
Secretary Establishment

April, 10, 2018

Chief Secretary, Khyber Pakhtunkhwa

Chief Minister

10/4/18
CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

324



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: CIVIL APPEAL NO 320-324 OF 2012 AND CIVIL APPEAL NO 126-P TO 130-P OF 2013 GOVT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT VERSUS DR.SHER MUHAMMAD AND OTHERS.

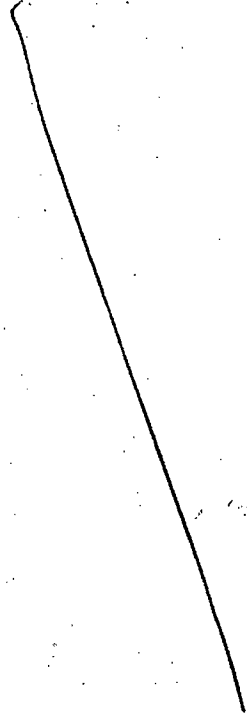
33

Para 2.3 + 2.4 are approved.

3.5.2018

Chief Minister
Khyber Pakhtunkhwa

CS





GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

33

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: CIVIL APPEAL NO 320-324 OF 2012 AND CIVIL APPEAL NO 126-P TO 130-P OF 2013 GOVT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT VERSUS DR.SHER MUHAMMAD AND OTHERS

Refer Para 1 to 33/Summary

34. As per approval of the competent authority (Chief Minister Khyber Pakhtunkhwa) vide Para-33 of the summary Notification regarding induction of the General Cadre doctors into the Health Management Cadre has been issued vide Health Department Notification dated 07th May, 2018(Annex-XI).

35. Director General Health Services Khyber Pakhtunkhwa has forwarded a list of the General Cadre alongwith MPH degrees duly attested and verified by the concerned authorities in respect of the following doctors for induction into the Health Management Cadre (Annex-XII, XIII).

S.#	NAME OF DOCTOR	FATHER NAME.	DATE OF JOINING SERVICE ON REGULAR BASIS
1.	Dr.Khan Bahadar BS-19	Gul Akbar	27.11.1998
2.	Dr.Muhammad Usman Shah BS-18	Muhammad Zahir Shah	23.07.2005
3.	Dr.Shiraz Ahmad BS-18	Rashid Ahmad	07.09.2007
4.	Dr.Shafqatullah BS-17	Amir Hamza	05.09.2016
5.	Dr.Fayyaz Ali Roomi BS-17	Humayun Roomi	20.03.2015
6.	Dr.Muhammad Javed Khan BS-20	Shah Zaman Khan	16.04.1986
7.	Dr.Syed Gul Hussain Syed BS-18	Syed Shah Jehan	16.09.2000
8.	Dr.Wasiullah BS-18	Shakirullah	16.09.2000
9.	Dr.Jameel Ahmad BS-18	Abdullah	23.07.2005
10.	Dr.Farman Ali BS-18	Muhammad Naseem	23.07.2007
11.	Dr.Waseem Ahmad BS-19	Qazi Muhammad Saleem	31.07.1993
12.	Dr.Irfanuddin BS-17	Habibul Mukhtar	10.04.2017
13.	Dr.Shaukat Saleem Khan BS-18	Saleem Khan	07.09.2007
14.	Dr.Sardar Aurangzeb BS-19	Sardar Muhammad Ashraf	23.01.1988
15.	Dr.Shah Faisal BS-19	Ronaq Zaman	15.09.1997
16.	Dr.Zahir Shah BS-19	Bahadar Khan	15.09.1997
17.	Dr.Irshad Ali BS-17	Muhammad Razzaq	10.04.2017
18.	Dr.Muhammad Farooq Gul BS-18	Gul Muhammad	23.07.2005
19.	Dr.Muhammad Alamgir BS-17	Nisar Muhammad	10.04.2017
20.	Dr.Bakht Belanad BS-17	Fazal Rehman	10.04.2017
21.	Dr.Khalid Khan BS-17	Shah Muhammad	10.04.2017

22.	Dr. Jamaluddin BS-18	Muhammad Din	23.07.2005
23.	Dr. Sherin Muhammad BS-17	Bacha Muhammad	10.04.2017
24.	Dr. Saeedullah Khan BS-19	Mukarram Khan	27.11.1998
25.	Dr. Erum Qayum BS-17	Syed Qayum	07.09.2007
26.	Dr. Nazar Muhammad BS-18	Bakht Sar	23.07.2005
27.	Dr. Zeeshan BS-17	Said Ali Khan	20.03.2015
28.	Dr. Fakhre-alam BS-17	Sultan Room	05.09.2016
29.	Dr. Hammad BS-18	Said Badshah	23.07.2005
30.	Dr. Muhammad Arif Khan BS-18	Amir Nawaz Khan	05.09.2016
31.	Dr. Waqar Ahmad BS-17	Mehboob Ali	05.09.2016
32.	Dr. Sagheer Ahmad BS-18	Noor Elahi	23.07.2005
33.	Dr. Ikramullah BS-17	Yar Jan	20.03.2015
34.	Dr. Muhammad Sadiq BS-18	Muhammad Anis	11.03.1999
35.	Dr. Humera Semab BS-17	Malik Khan Muhammad	26.11.2011
36.	Dr. Kamran Yousaf BS-18	Muhammad Yousaf	23.07.2005
37.	Dr. Muhammad Wali Ali BS-17	Muhammad Anam	20.03.2015
38.	Dr. Naseeb Gul BS-17	Haseeb Gul	15.09.2012
39.	Dr. Muhammad Mudassar Iqbal Khan BS-17	Muhammad Iqbal Khan	27.10.2011
40.	Dr. Naik Muhammad BS-18	Khawaja Muhammad	23.07.2005
41.	Dr. Sohrab Ali BS-17	Azizullah Khan	20.03.2015
42.	Dr. Noor Islam BS-17	Sheraz Gul	8-2016
43.	Dr. Saeeda Bibi BS-18	Daud Khan	07.09.2007
44.	Dr. Muhammad Hayat BS-19	Muhammad Amir	15.04.1992
45.	Dr. Muhammad Sajjad BS-17	Muhammad Saeed	2017
46.	Dr. Muhammad Arif BS-18	Gulbar Khan	23.07.2005
47.	Dr. Attaullah BS-17	Khair Muhammad	27.02.2013
48.	Dr. Khizar Hayat BS-18	Pir Muhammad Khan	24.10.2009
49.	Dr. Jamshid Saeed BS-18	Saeed Ahmad	23.07.2005
50.	Dr. Sallem Khan BS-17	Muhammad Akbar Khan	April, 2017
51.	Dr. Tariq Khan BS-19	Rasool Khan	31.07.1993
52.	Dr. Muhammad Tahir Khan BS-18	Faiz Muhammad Khan	23.07.2005
53.	Dr. Muhammad Umar BS-18	Gul Muhammad	23.07.2005
54.	Dr. Ghani-ur Rehman BS-19	Abdul Ghani	23.01.1988
55.	Dr. Mian Habib-ur-Rehman BS-19	Mian Fazlur Rehman	15.09.1997
56.	Dr. Syed Rehmat Ali BS-17	Mian Gul Zada	2016
57.	Dr. Muhammad Kashif Shahid Khan BS-17	Jamandos Khan	20.03.2015
58.	Dr. Shahzada Muhammad Haider-ul-Mulk BS-19	Shahzada Muta-ul-Mulk	27.11.1998
59.	Dr. Daud Khan BS-18	Muhammad Rahim Khan	16.09.2000

36. In view of the above, the Chief Minister Khyber Pakhtunkhwa is requested to induct the officers of the General Cadre mentioned in Para-35 into the Health Management Cadre under the amended Rule-10 of the Management Cadre. 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 1999

37. Para- and 36 of the summary is submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.

Muhammad Abid Majeed
(Muhammad Abid Majeed)
Secretary Health.

Secretary Establishment
Khyber Pakhtunkhwa.

Chief Secretary
Khyber Pakhtunkhwa.


Chief Minister
Khyber Pakhtunkhwa.

38. Summary for the Chief Minister Khyber Pakhtunkhwa submitted by Health Department with regard to induction of General Cadre doctors into Management Cadre has been examined.

39. It is observed that:-

- i. Health Department vide Para-35 of the summary has proposed induction of 59 General Cadre doctors into Management Cadre whereas the lists provided by Director General Health Services vide Annex-XII & XIII shows 21 doctors which needs clarification.
- ii. Administrative Department may provide the updated list of scale wise vacant/occupied posts of the Management Cadre against which the proposed doctors of General Cadre are being inducted in the Management Cadre.
- iii. Establishment Department reiterates its earlier stance at Para-31 (iii) of the summary regarding determination of seniority of newly inductees as Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 is not attracted in this case and Supreme Court Order needs to be followed.

40. Summary is returned to Health Department for clarification of the above observations.


(ARSHAD MAJEED)
Secretary Establishment
August 20, 2018

Secretary Health:



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

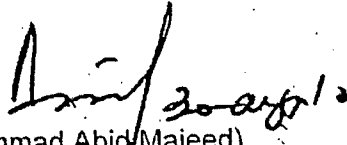
37

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: CIVIL APPEAL NO 320-324 OF 2012 AND CIVIL APPEAL NO 126-P TO 130-P OF 2013 GOVT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT VERSUS DR.SHER MUHAMMAD AND OTHERS

Refer Para-38 to 40/Summary.

41. Reply to the observations are as under:-
- As mentioned in Para-35 of the summary, the Director General Health Services Khyber Pakhtunkhwa has provided a list of 59-doctors of the General Cadre alongwith their MPH Degrees for induction into the Health Management Cadre duly flagged as (Annex-XII, XIII, XIV).
 - List of the vacant positions of the Management Cadre posts may be seen at (Annex-XV).
 - As and when the induction into the Health Management Cadre has been completed, the Seniority list of the Management Cadre doctors BS-17 to BS-20 will be finalized accordingly as per the judgment of the Supreme Court of Pakistan.
42. Para-35 read with Para-37 of the summary is submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.


(Muhammad Abid Majeed)
Secretary Health.

Secretary Establishment
Khyber Pakhtunkhwa.


Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister

43. Summary for the Chief Minister Khyber Pakhtunkhwa submitted by the Health Department with regard to the induction of General Cadre doctors into Management Cadre was examined earlier and observations mentioned in Para-39 were conveyed to the Health Department.

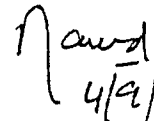
44. As a pre-requisite for induction into the Management Cadre of a doctor, MPH degree is mandatory. The Health Department has clarified the observations by providing the Degrees of all 59 General Cadre doctors, mentioned in Para-35 of the summary. In addition to that, the department has provided the list of vacant positions of the Management Cadre posts as well; that is found in order.

45. The Proposal contained in Para-35 is submitted for approval of the Chief Minister Khyber Pakhtunkhwa.


(ARSHAD MAJEED)
Secretary Establishment
September 4, 2018

46. Chief Secretary Khyber Pakhtunkhwa

Para 45/N- is endorsed.


4/9/18

Chief Secretary
Govt. of Khyber Pakhtunkhwa

LT CHIEF MINISTER

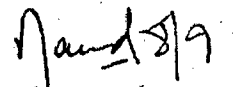
Para 35 is approved.



6.9.2018

Chief Minister
Khyber Pakhtunkhwa

Secy Health


Chief Secretary
Govt. of Khyber Pakhtunkhwa

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No.SOH(E.V)4-20/2018
Dated Peshawar the. 25.05.2018

Dr Sahib Gul Khan & others
(Members of Service of Health Management Cadre)
Through Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST NOTIFICATION NO.SOH(E.V)4-20/2018, DATED 07.05.2018.

Dear Sir,

I am directed to refer to the subject noted above to state that the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 were notified on 11.12.2008 and the same were published in the official gazette of the Province on 02.11.2016 within the meaning of "Notification" in accordance with law.

2. Thereafter, Dr. Sher Muhammad etc, doctors of the General Cadre filed service appeals in the Khyber Pakhtunkhwa Service Tribunal for induction into Health Management Cadre. The Tribunal vide its judgment dated 03.01.2012 passed the following order:-

"The Tribunal observes that Section-10 of the said Rules does not provided any cushion period and deny 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 two years from the date of the decision, they may opt and join management cadre without effecting their seniority/service.

With the above variation/modification in the impugned Notification dated 11.12.2008, the present appeals as disposed of accordingly."

3. The Health Department as well as the Members of Service of Health Management Cadre filed appeals in the h'ble Supreme Court of Pakistan. The h'ble Supreme Court of Pakistan, vide its final judgment in the case dated 3.11.2016 passed the following order:-

"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."

4. To implement the judgments [the Judgment of the Khyber Pakhtunkhwa Services Tribunal so upheld by the h'ble Supreme Court of Pakistan, as above], the Health Department proposed the following actions, which, after due endorsement of the regulatory Departments of Law & Establishment and approval of the Chief Minister Khyber Pakhtunkhwa, were implemented:-

- (i) Amending Rule 10 of the Management Cadre Rules to provide, with immediate effect, 2-years period to all in-service doctors to improve their qualifications/obtain qualifications provided for lateral induction in Management Cadre and, on expiry of 2 years period in 2019 give notice, through wide publicity as a one-time exercise for such doctors to give their option to join the Management Cadre in accordance with Rule 10; In this regard a meeting of SSRC was held under the Chairmanship of Secretary Health Department Khyber Pakhtunkhwa on 10.03.2017 on the captioned subject. The meeting was attended by the representative of Finance, Establishment Department, wherein the following addition in rule 10 was agreed upon unanimously along with further amendments in the Schedule-III appended to the Health Management Service Rules, 2008 and notified in official gazette after due approval of the competent authority:

"Provided further that for a period of two years from the date of this Notification the officers of the General Cadre who are in regular and continuous service on the said date shall be entitled to improve their qualification as per these rules to exercise the option"

- (ii) Give notice vide publicity, for exercise of option by all such doctors who have, as of that day, obtained qualifications provided for lateral induction in Management Cadre to join the Management Cadre and consequently induct them under Rule-10 as one-time exercise with immediate effect; Notice was published in newspapers too.

- 1. Director General Health Services
- 2. PSO to CS for information of the Chief Secretary Khyber Pakhtunkhwa

Copy to:

SECTION OFFICER (E.V)



Young Fatmally

- 3. This issues with the express approval of Secretary Health, Khyber Pakhtunkhwa.
- 4. In view of the above legal position, the appeal of the Members of Health Management Cadre submitted to the Hon'ble Chief Justice of Pakistan during the proceedings at Peshawar Registry on May 9, 2018, converted into department appeal by verbal order of his Lordship, being devoid of merit, cannot be acceded to.
- 5. The Members of Health Management Cadre were also appellant as mentioned in the judgment dated 3.11.2016 of the Hon'ble Supreme Court of Pakistan. If aggrieved, remedy was available to them under the law to file review against the judgment. However, the Members of Health Management Cadre have also exhausted the same.
- 6. The judgment of the Tribunal would have attained finality on 02.01.2014, if its operation had not been suspended by the apex court till its decision arrived on 03.11.2016. The departmental action regarding implementing the judgment, attained finality on 29.3.2017. In other words, one time exercise of induction took place from 11.12.2003 and will end on 03.05.2019 which will cover legally all inductions started from 2003-07 and onward.
- 7. (ii) Subject to completion of such exercise, the Index of 2008 that may be amended to the extent of deletion of Rule 10 bid alongwith other amendment. If considered necessary to attain finality.

(Appellate Jurisdiction)

Annex - 1

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Civil Appeal Nos. 320 to 324 of 2012.

Out of

Civil Petition Nos. 383 to 387 of 2012.

Dr. Muhammad Saleem and others. (App. in all cases).

VERSUS

1. Dr. Sher Muhammad and others. (Res. in C.A.320/2012).
2. Dr. Gul Akbar and others. (Res. in C.A.321/2012).
3. Dr. Wakil Muhammad and others. (Res. in C.A.322/2012).
4. Dr. Shaukat Ali and others. (Res. in C.A.323/2012).
5. Dr. Syed Mujahid, Hussain & others. (Res. in C.A.324/2012).

On appeal from the Judgment and Order of the KPK Service Tribunal, Peshawar dated 3.1.2012, in A. Nos.513-517/2010.

To,

1. Dr. Sher Muhammad son of Shah Muhammad, Provincial Manager, AIDS Control Programme, Peshawar. (Res. in C.A.320/2012). C/O D.R. (Peshawar).
2. Secretary to Government of Khyber Pakhtunkhwa Health Department, Civil Secretariat, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
3. Director General Health Services Khyber Pakhtunkhwa, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
4. Secretary to the Government of Khyber Pakhtunkhwa Law Department, Civil Secretariat, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
5. Secretary to the Government of Khyber Pakhtunkhwa Finance Department Civil Secretariat, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
6. Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
7. Dr. Abdul Wahed Shah son of Amin Shah (BPS-19), EDO (H), Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
8. Dr. Muhammad Zafar son of Qazi Jaffar Khan (BPS-19), Chief Executive, K.T.H., Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
9. Dr. Muhammad Zaheem son of Muhammad Amin (BPS-19), Deputy Director P.H.S.A. Khyber Pakhtunkhwa, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
10. Dr. Tahir Nadim Khan son of Ghulam Rabbani Khan, (BPS-19), Director M&ED.G.H.S., Khyber Pakhtunkhwa, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
11. Dr. Wahid Gul son of Redi Gul (BPS-18), Coordinator H.S.R.U. Health Department, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
12. Dr. Shaheen Afridi daughter of Zar Khan Afridi (BPS-18), Coordinator H.S.R.U. Health Department, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).

attested
s. bag

Put up jointly by 25/4/2012

Contd...P/2.

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13. Dr. Imtiaz Ali Shah son of Sarzamin Khan (BPS-17), Coordinator H.S.R.U. Health Department, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
14. Dr. Akhtar Said son of Shah Said (BPS-17) MO ED (H), Swat. (Res. in C.As.320-324/2012)
15. Dr. Jawad Habib son of Habib Ullah Khan (BPS-17), Project Director Health Afghan Refugees, Khyber Pakhtunkhwa, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
16. Dr. Jamal Abdul Nasir son of Mukhtiar Ahmad, Chief H.S.R.U. Health FATA, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
17. Government of K.P.K. through Secretary Health, Khyber Pakhtunkhwa, Peshawar. (Res. in C.As.320-324/2012). C/O D.R. (Peshawar).
18. Dr. Gul Akbar son of Gul Khan, Medical Superintendent (MS), District Headquarters (DHQ), Hospital, Mardan. (Res. in C.A.321/2012).
19. Dr. Wakil Muhammad son of Taj Maluk, Medical Superintendent (MS), District Headquarters (DHQ) Hospital, Timergara. (Res. in C.A.322/2012).
20. Dr. Shaukat Ali son of Gul Nawaz Khan, Deputy EDO (Health), Dir Lower, Timergara. (Res. in C.A.323/2012).
21. Dr. Syed Mujahid Hussain son of Syed Shabir Hussain, Deputy Director Expanding Programme on Immunization, Khyber Pakhtunkhwa (then NWFP), Peshawar. (Res. in C.A.324/2012). C/O D.R. (Peshawar).

Take notice that the above cited cases came up for hearing before the Court on 03.04.2012, and while granting leave to appeal to the above named petitioners/appellants the court has been pleased to direct as under:

"...The operation of the impugned judgment is suspended till then."

Take further notice that this Court has ordered hearing/fixation of these appeals at the earliest.

You are, therefore, required to enter appearance immediately after the receipt of this notice as provided by rule 1, of Order XVI, Supreme Court Rules, 1980, failing which these appeals are likely to be set down for hearing ex-parte as against the non-appearing respondents under rule 6, Order XVI, Supreme Court Rules, 1980.

Islamabad, the 19/4/ 2012.

Attested
s. b. a. j.


(IQBAL NASEER)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

PESHAWAR HIGH COURT, PESHAWAR.

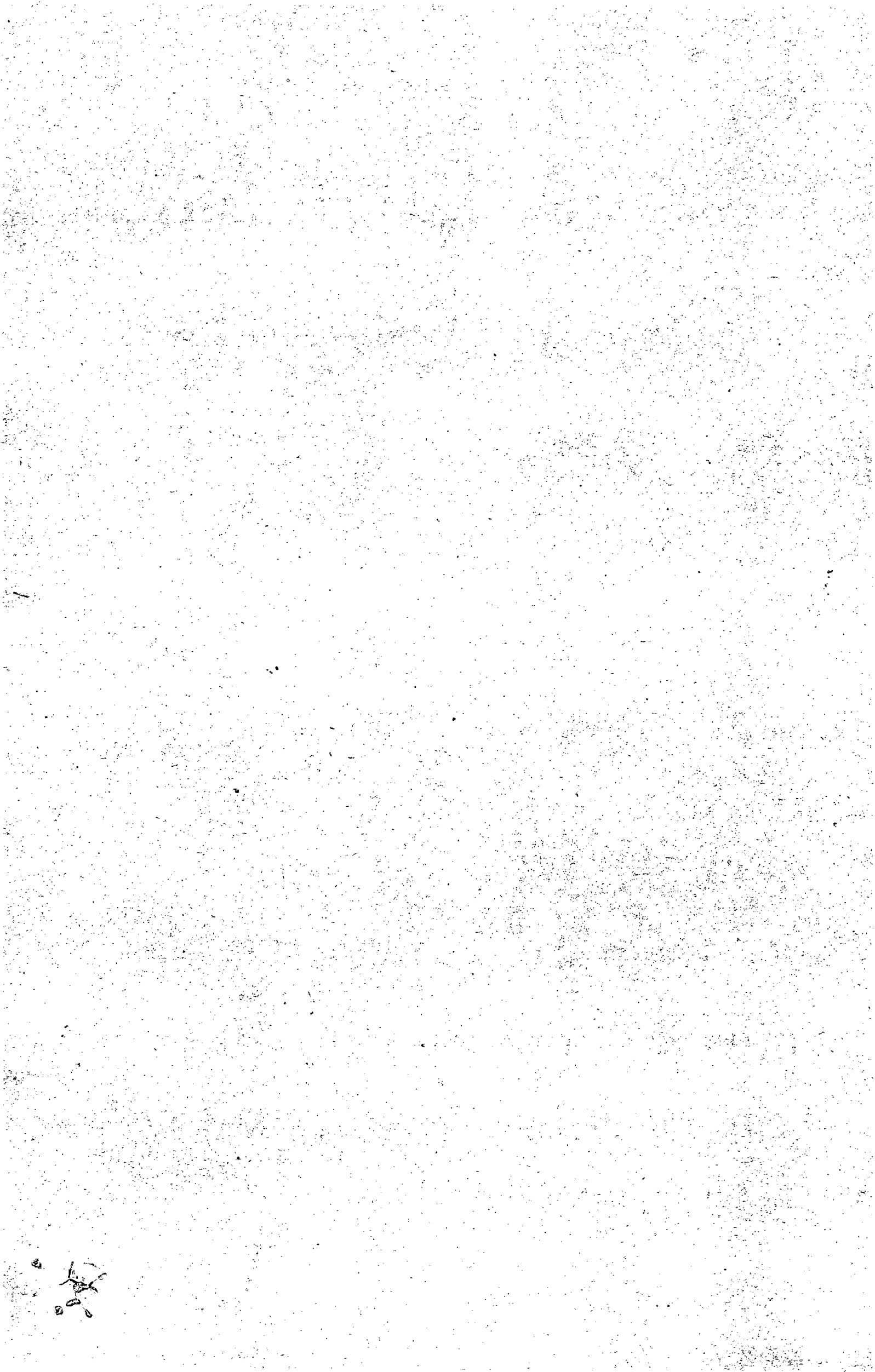
FORM 'A'
FORM OF ORDER SHEET

Annex - ②
F-

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Date of order.	Order or other proceedings with the order of the Judge
05.10.2021	<p data-bbox="422 541 702 579"><u>W.P.No.3223-P of 2020.</u></p> <p data-bbox="422 604 1061 667">Present: Qazi Jawad Ehsanullah, advocate for the petitioners.</p> <p data-bbox="550 693 1061 793">M/s Ghulam Mohy-ud-Din Mallk, Sabitullah Khan and Habib Anwar, advocates for the respondents.</p> <p data-bbox="550 819 1061 894">Mr.Muhammad Riaz, AAG for the Provincial Government.</p> <p data-bbox="478 945 1061 995"><u>LAL JAN KHATTAK, J.-</u> Petitioners through the</p> <p data-bbox="406 1020 1061 1738">instant petition have not only questioned the appointments/absorptions of the respondents No.4 to 150 in the management cadre of the Department of Health, Government of Khyber Pakhtunkwa through the writ of quo warranto but they have also sought issuance of a writ declaring the Notifications dated 07.05.2018 and 10.09.2018 as illegal and unlawful whereunder the respondents have been appointed in the Health Management Cadre by transferring from the General Cadre.</p> <p data-bbox="399 1776 1061 1990">2. In a nutshell the petitioners' case is that the Government of Khyber Pakhtunkwa in order to achieve better results in the health sector separated the</p>

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management and general cadres in the Health Department by promulgating the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 whereafter induction of the respondents No.4 to 150 by way of their permanent transfers into the management cadre from the General Cadre were made which process, according to the petitioners, has blocked all chances of their progression and promotion in the department.

3. Parawise comments to the writ petition were called for from the respondents which have been submitted wherein issuance of the desired writ has been opposed.

4. Arguments heard and record gone through.

5. Admittedly the petitioners and the private respondents are civil servants and the latter's appointments through their permanent transfers into the management cadre fall within the terms and conditions of their service and a Tribunal has been established by the Government to adjudicate upon the issues pertaining to the terms and conditions of a civil servant. Not the above but it is worth to mention that on the issue raised by the petitioners in the instant petition the Services Tribunal of Khyber Pakhtunkhwa has already delivered a judgment on 03.01.2012 which was then impugned before the apex

Again

court through many appeals but same were dismissed vide judgment dated 03.11.2016. Besides, one of the present petitioners, namely, Dr. Fahad Iqbal has also approached the Services Tribunal against the respondents herein through service appeal bearing No.513 of 2010 which is still pending adjudication wherein appointments of the respondents made through the referred two Notifications have been impugned.

6. As the matter agitated before this court through the instant petition is pending adjudication before a proper forum, therefore, this petition is hereby dismissed for its being not maintainable.

[Signature]
JUDGE

[Signature]
JUDGE



Government of Khyber Pakhtunkhwa,
Health Department

Annex-8.

- 4 -

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Dated Peshawar the July 15, 2021

NOTIFICATION

NO. SOH (E-V)/M.Cadre/4-4/Up-gradation/2021 In pursuance to approval by the Competent Authority (Chief Minister, Khyber Pakhtunkhwa), on a summary, and in consultation with Establishment and Finance Departments of Khyber Pakhtunkhwa, sanction is hereby accorded to the up-gradation of the following incumbents of the posts of Member of Service (BS-17) of the Management Cadre doctors, with immediate effect:-

S/No	Nomenclature of the post	Current Posting	From	To
1.	Dr. Abdul Qayyum	DD IMU Health	BS-17	BS-18
2.	Dr. Hamid Muhammad Afridi	Deputy DHO, FR Peshawar	BS-17	BS-18
3.	Dr. Mehreen Aziz Khan	PHSA Peshawar	BS-17	BS-18
4.	Dr. Shams-Ur-Rehman	N-STOP officer/ MO at the disposal of DHO, Khyber	BS-17	BS-18
5.	Dr. Attaullah.	Deputy Chief, HSRU	BS-17	BS-18
6.	Dr. Kifayatullah	N-STOP officer, Swat/ MO, THQ Matta Swat.	BS-17	BS-18
7.	Dr. Inayat ur Rehman	DHO, Kurram (Lower)	BS-17	BS-18
8.	Dr. Fahad Iqbal	DHIS Coordinator, DHO, Office, Mardan.	BS-17	BS-18
9.	Dr. Hamza Abbas Khan	DMS, DHQ Mardan	BS-17	BS-18
10.	Dr. Liaqat Ali	EPI Coordinator, Swat	BS-17	BS-18
11.	Dr. Muhammad Bilal Khan	DD Public Health DGHS	BS-17	BS-18
12.	Dr. Shaima Malik	DM Aids Program	BS-17	BS-18
13.	Dr. Hafizullah Khan	Provincial N-STOP officer	BS-17	BS-18
14.	Dr. Shabnum Khawas	EOC, Peshawar	BS-17	BS-18
15.	Dr. Muhammad Hayat	DHO, Mohamand	BS-17	BS-18
16.	Dr. Fazal Qayum	MO, THQ Hospital Samarbagh Lower Dir	BS-17	BS-18
17.	Dr. Pir Zada	Coordinator EPI, Kohistan	BS-17	BS-18

Section Officer (SV)
Health Department
Khyber Pakhtunkhwa

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18.	Dr. Muhammad Sohail Farooqi	DD Public Health DGHS	BS-17	BS-18
19.	Dr. Faisal Malik	MO, HMC MTI	BS-17	BS-18
20.	Dr. Shumaila Malik	WMO, Molvi Jee Hosp: Peshawar.	BS-17	BS-18
21.	Dr. Bilal Bahrawar	PM IDSR DGHS	BS-17	BS-18
22.	Dr. Makhdoom Safdar	DD EPI, DGHS Office, Peshawar	BS-17	BS-18
23.	Dr. Tanveer Inam	DD MCH, DGHS Office, Peshawar	BS-17	BS-18
24.	Dr. Tariq Hayat Taj	Waiting for posting	BS-17	BS-18
25.	Dr. Majid Khan	N-STOP officer, Kohat	BS-17	BS-18
26.	Dr Saira Jabeen	DD PHSA	BS-17	BS-18
27.	Dr. Majid Saleem	TSO RDSU, D.I.Khan	BS-17	BS-18
28.	Dr. Muhammad Israrul Haq	Attached to DHO Bannu	BS-17	BS-18
29.	Dr. Adnan Khan	DHO, Orakzai	BS-17	BS-18
30.	Dr. Humerea Semab	Attached to DHO, Mansehra	BS-17	BS-18
31.	Dr. Muhammad Muddasserr Iqbal Khan	DD Public Health DGHS	BS-17	BS-18
32.	Dr. Attaullah	DHO, Kurram Uper	BS-17	BS-18
33.	Dr. Ikramullah	DDHO, Mardan.	BS-17	BS-18
34.	Dr. Irfanuddin	DMS, DHQH, Batkhela	BS-17	BS-18
35.	Dr. Muhammad Kashif Shahid Khan	Demonstrator, Gajju Khan Medical College, Swabi.	BS-17	BS-18
36.	Dr. Naseeb Gul	DMS, AHQH, Bajaur.	BS-17	BS-18
37.	Dr. Muhammad Wajid Ali	EPI Coordinator, Shangla	BS-17	BS-18
38.	Dr. Fayyaz Ali Roomi	DD EPI DGHS	BS-17	BS-18
39.	Dr. Zeeshan	N-STOP Mardan/ Type-D Hospital Madian Swat	BS-17	BS-18
40.	Dr. Sherin Muhammad	MO, Attached to DHO L/Dir	BS-17	BS-18
41.	Dr. Fakhre Alam	Incharge MO, Cat-D Hospital, Barikot Swat	BS-17	BS-18
42.	Dr. Muhammad Alamgir	Attached to DHO, Charsadda	BS-17	BS-18
43.	Dr. Khalid Khan	DMS, DHQH, U/Dir.	BS-17	BS-18
44.	Dr. Muhammad Arif Khan	Attached to DHO Swabi.	BS-17	BS-18
45.	Dr. Saleem Khan	DD, AMC, Abbottabad.	BS-17	BS-18

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46.	Dr. Irshad Ali	DDHO, Dir Lower	BS-17	BS-18
47.	Dr. Muhammad Sajjad	MO, DHQH Alpurai.	BS-17	BS-18
48.	Dr. Noor Islam	MO, DHQ Swabi.	BS-17	BS-18
49.	Dr. Syed Rahmat Ali	Coordinator DHO office, Swat	BS-17	BS-18
50.	Dr. Waqar Ahmad	Coordinator Programme Swabi. LHW	BS-17	BS-18
51.	Dr. Shafqat Ullah	Attached to DHO Lakki Marwat	BS-17	BS-18

2. Moreover, the following members of Service (BS-17), presently on deputation/ Extra Ordinary Leave, will be upgraded to BS-18 upon their arrival/ report back to this department w.e.f that date:-

S/No	Nomenclature of the post	Current Posting	From	To	Remarks
1.	Dr. Rajwal Khan	On deputation	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from deputation
2.	Dr. Syed Nayyar Raza Kazmi	EOL	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL
3.	Dr. Ziaullah Khan Dawar	EOL	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL
4.	Dr. Imtiaz Ali Shah	1825 days EOL w.e.f from 01.05.2011 to 30.04.2016	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL
5.	Dr. Haris Mustafa	On deputation	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from deputation
6.	Dr. Syed Irfan Ali Shah	Deputation to WHO w.e.f 22.02.2021.	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from deputation
7.	Dr. Ahmad Tariq	On deputation WHO	BS-17	BS-18	He will actualize up-gradation to BS-18

Section Officer (S/O)
Health Department
Khyber Pakhtunkhwa

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					after reporting back to Health Department from deputation
8.	Dr. Sufian Khan	On deputation WHO	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from deputation
9.	Dr. Sheraz Ahmad Khan	EOL/ study leave	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL
10.	Dr. Sohrab Ali	EOL 24.04.2020 to 23.04.2022	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL
11.	Dr. Bakht Beland	EOL	BS-17	BS-18	He will actualize up-gradation to BS-18 after reporting back to Health Department from EOL

**Secretary Health
Government of Khyber Pakhtunkhwa**

Endst. Of even No. & Date.

Copy to the -

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. PSD to Chief Secretary, Khyber Pakhtunkhwa.
4. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Director General PHSA, Khyber Pakhtunkhwa.
6. Director General Drugs, Khyber Pakhtunkhwa.
7. Chief HSRU, Health Department, Khyber Pakhtunkhwa.
8. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
9. All District Health Officer, Khyber Pakhtunkhwa.
10. All Medical Superintendent, Khyber Pakhtunkhwa.
11. All Hospital Director MTIs, Khyber Pakhtunkhwa.
12. All District Accounts Officers, Khyber Pakhtunkhwa.
13. Manager Government Printing Press, Peshawar for Gazette notification.
14. PS to Minister for Health Department, Khyber Pakhtunkhwa.
15. PS to Secretary Health Department, Khyber Pakhtunkhwa.
16. All Doctors concerned.

(Laif-Ur-Rehman)
SECTION OFFICER (E-V)

Section Officer (EV)
Health Department
Khyber Pakhtunkhwa

15-7-21



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the August 23, 2021

NOTIFICATION

NO. SCH (E-V)4-4/2021 - Consequent upon the Up-gradation of Member of Service (BS-17) to (BS-18) vide this Department Notification dated 15/07/2021, the Competent Authority is pleased to order posting/ actualization of the following Management Cadre doctors, in the public interest, with immediate effect -

S/NO	NAME OF DOCTOR	FROM	TO
1	Dr. Abdul Qayyum	DD IMU Health	DD IMU Health, Peshawar
2	Dr. Hamid Muhammad Afridi	Deputy DHO, FR Peshawar	Deputy District Health Officer, FR Peshawar
3	Dr. Mehreen Aziz Awan	PHSA Peshawar	Coordinator (Public Health) DHO Office, Charsadda
4	Dr. Shams-Ur-Rehman	N-STOP officer/ MO at the disposal of DHO, Khyber	Assistant District Health Officer BS-18 for actualization of Up-gradation and report back as N-STOP Officer, Khyber
5	Dr. Attaullah	Deputy Chief, HSRU	Deputy Chief, HSRU, Health Department, Peshawar
6	Dr. Kifayatullah	N-STOP officer, Swat/ DMS THQ Matta Swat.	DMS THQ Hospital Matta Swat BS-18 for actualization of Up-gradation and report back as N-STOP Officer, Swat
7	Dr. Inayat ur Rehman	DHO, Kurram (Lower)	DHO, Kurram (Lower)
8	Dr. Fahad Iqbal	DHIS Coordinator, DHO, Office, Mardan.	DMS, Type-D Hospital Toru, Mardan for actualization of Up-gradation and then work as MS of the said Hospital in OPS
9	Dr. Hamza Abbas Khan	DMS, DHQ Mardan	Deputy Medical Superintendent, DHQ Hospital, Mardan

10.	Dr. Liaqat Ali	EPI Coordinator, Swat	EPI Coordinator, Swat
11.	Dr. Muhammad Bilal Khan	DD Public Health DGHS	DMS, Type-D Hospital Ghazi, Haripur
12.	Dr. Shaima Malik	Instructor Peshawar	PGMI Vice Principal ZAB-PGPI, Peshawar
13.	Dr. Hafizullah Khan	Provincial Officer	N-STOP Deputy Medical Superintendent, DHQ Hospital, Lakki Marwat BS-18 for actualization of Up-gradation and report back as Provincial N-STOP Officer
14.	Dr. Shabnum Khawas	TSO Peshawar / Maulvi Ji, Peshawar	NSTOP, DMS Maulvi Ameer Shah Ji, Hospital Peshawar BS-18 for actualization of Up-gradation and report back as TSO N-STOP, Peshawar
15.	Dr. Muhammad Hayat	DHO, Mohmand	District Health Officer, Mohmand
16.	Dr. Fazal Qayum	MO, THQ Hospital Samar Bagh Dir Lower	Deputy Medical Superintendent, THQ Hospital Samar Bagh, Dir Lower
17.	Dr. Pir Zada	Coordinator Kohistan	EPI, Coordinator EPI, Kohistan Upper
18.	Dr. Muhammad Sohail Farooqi	DD Public Health DGHS	DMS, Cat-C Hospital Lahore, Swabi and then work as MS, of the said Hospital in OPS
19.	Dr. Faisal Malik	MO, HMC MTI	Deputy Medical Superintendent, Type-D Hospital Manki Sharif, Nowshera for actualization of promotion and then work as MS of the said hospital in OPS
20.	Dr. Shumaila Malik	DMS, Moulvi Ameer Shah Memorial Hospital Peshawar	Deputy Medical Superintendent (Admin), Moulvi Ameer Shah Memorial Hospital, Peshawar
21.	Dr. Makhdoom Safdar	DD EPI, DGHS Office, Peshawar	Deputy Director (EPI) DGHS
22.	Dr. Tanveer Inam	DD MNCH, DGHS Office, Peshawar	DD MNCH, DGHS Office, Peshawar

23.	Dr. Tariq Hayat Taj	Waiting for posting	He will actualize his upgradation against the post of DMS, Cat-C Hospital Swabi for actualization of Up-gradation and then work as MS of the said Hospital in OPS
24.	Dr. Majid Khan	N-STOP officer, Kohat / attached to DHO Bajaur	Coordinator DHO office Hangu BS-18 for actualization and report back as N-STOP Officer, Kohat
25.	Dr. Saira Jabeen	DD PHSA	DMS, THQ Hospital Shabqadar, Charsadda
26.	Dr. Majid Saleem	TSO RDSU, D.I.Khan / attached to DHO D.I.Khan	Coordinator (EPI) DHO Office D.I.Khan
27.	Dr. Muhammad Israr ul Haq	Attached to DHO Bannu	Coordinator (LHW) DHO Office Bannu
28.	Dr. Adnan Khan	DHO, Orakzai	District Health Officer Orakzai
29.	Dr. Humerea Semab	DHIS Coordinator Mansehra	DHIS Coordinator District Mansehra
30.	Dr. Muhammad Muddasir Iqbal Khan	DD Public Health DGHS	DMS, Type-D Hospital Khanpur, Haripur
31.	Dr. Attaullah	DHO, Kurram Uper	District Health Officer, Kurram (Upper)
32.	Dr. Ikramullah	DDHO, Mardan.	Coordinator DHO Office Mardan for actualization of post and report back as Deputy DHO, Mardan
33.	Dr. Irfanuddin	DMS, DHQH, Batkhela	He will actualize his upgradation against the post of Deputy Medical Superintendent THQ Hospital Dargai and then work as MS in the said Hospital in OPS
34.	Dr. Muhammad Kashif Shahid Khan	Demonstrator, Gajju Khan Medical College, Swabi.	DHIS Coordinator DHO office Swabi
35.	Dr. Naseeb Gul	DMS, AHQH, Bajaur.	Deputy Medical Superintendent, Cat-D Hospital Mayar Dir Lower BS-18 for one day actualization and then work as MS in the said Hospital in OPS

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36.	Dr. Fayyaz Ali Roomi	DD EPI DGHS	He will actualize his upgradation against the post of Coordinator (EPI) Chitral Upper for one day and then work as Deputy DHO, Chitral Upper in OPS
37.	Dr. Zeeshan	N-STOP Type-D Madyan Swat Mardan/ Hospital	Deputy Medical Superintendent, Civil Hospital Madyan Swat BS-18 for actualization of Up-gradation and report back as N-STOP Officer, Mardan
38.	Dr. Sherin Muhammad	MO, Attached to DHO L/Dir	Deputy Medical Superintendent, THQ Hospital Chikdara Dir Lower
39.	Dr. Fakhre Alam	Incharge MO, Cat-D Hospital, Barikot Swat	Deputy Medical Superintendent, Cat-D Hospital Barikot, Swat for actualization of Up-gradation and then work as MS of the said Hospital in OPS
40.	Dr. Muhammad Alamgir	Attached to DHO, Charsadda	DHIS Coordinator DHO office Charsadda
41.	Dr. Khalid Khan	DMS, DHQH, U/Dir.	Deputy Medical Superintendent, DHQ Hospital Dir Upper
42.	Dr. Muhammad Arif Khan	Attached to DHO Swabi.	Coordinator EPI DHO Office, Swabi
43.	Dr. Saleem Khan	DD, AMC, Abbottabad.	Coordinator EPI DHO office Abbottabad for actualization of Up-gradation and then report to AMC, (MTI) Abbottabad for further posting
44.	Dr. Irshad Ali	DDHO, Dir Lower	Coordinator DHO Office Dir Lower for actualization of post and report back as Deputy DHO, Dir Lower in OPS
45.	Dr. Muhammad Sajjad	MO, DHQ Alpurai, Shangla.	Deputy Medical Superintendent, THQ Hospital Puran Shangla
46.	Dr. Noor Islam	MO, DHQ Swabi.	Deputy Medical Superintendent, DHQ Hospital, Swabi

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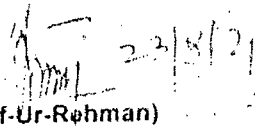
47.	Dr. Syed Rahmat Ali	Coordinator office, Swat	DHO	Public Health Coordinator DHO office Swat
48.	Dr. Waqar Ahmad	Coordinator Programme Swabi.	LHW	DMS, Cat-C Hospital Kalu Khan, Swabi
49.	Dr. Shafqat Ullah	Attached to Lakki Marwat	DHO	Coordinator (LHW) DHO office Lakki Marwat
50.	Dr. Syed Irfan Ali Shah	DD DGHS		Deputy Director/ EOC, COVID DGHS

**Secretary Health
Government of Khyber Pakhtunkhwa**

Endst. of even No. & Date.

Copy to the -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Director General Health, Ministry of National Health Services, Regulations & Coordination, Islamabad.
4. Provincial Coordinator EOC, Khyber Pakhtunkhwa.
5. All Director Health Officers, Khyber Pakhtunkhwa.
6. All Medical Superintendent, DHQ Hospitals, Khyber Pakhtunkhwa.
7. All District Accounts Officers, Khyber Pakhtunkhwa.
8. Assistant Director (IT), Health Department, with the direction to upload the notification on official website
9. PS to Minister for Health Department, Khyber Pakhtunkhwa
10. PS to Secretary Health Department, Khyber Pakhtunkhwa
11. Doctors concerned
12. Personal Files of the doctors concerned


(Latif-Ur-Rehman)
SECTION OFFICER (E-V)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL



Service Appeal No. 830 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1065

Dated 22/06/2018

Dr. Shams Ur Rehman
Son of Zahir Gul
Officers of Health Service Management Cadre (BPS-17)
Government of Khyber Pakhtunkhwa Peshawar

..... APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary
Civil Secretariat Peshawar
2. The Secretary Health
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar
3. Muhammad Saleem s/o Inayat ur Rahman
4. Muhammad Ismail s/o Said Muhammad
5. Shahid Mehmood s/o Sardar Muhammad Aslam
6. Muhammad Mustafa Alam s/o Nasrullah Jan

7. Khalil ur Rehman s/o Ali Rehman

8. Mohammad Shuaib s/o Mohammad Ajab

9. Mohammad Munib s/o Mohammad Sher Ali Khan

10. S. Muhammad Taimur Shah s/o Pir Ferooz Shah

11. Firdos Jabeen s/o Muhammad Aslam Khan

12. Kalimollah Khan s/o Eld Gul

13. Niaz Mohammad s/o Dost Mohammad

14. Zafarullah Khan s/o Ghulam Sarwar

15. Saeed ur Rahman s/o Haji Fazl Rahman

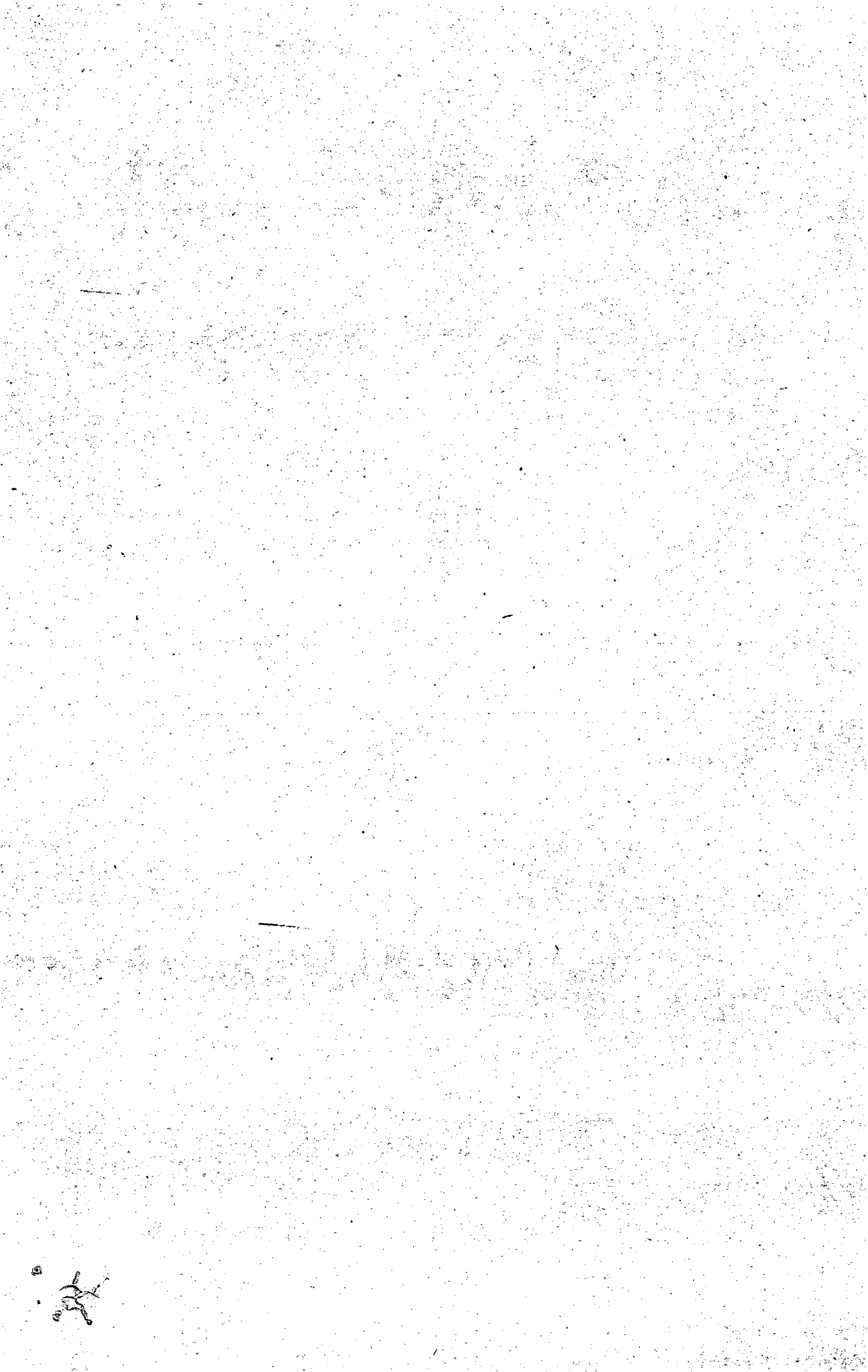
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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Registered
 22/6/18
 and filed
 22/6/18



1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 830/2018

Date of Institution ... 22.06.2018

Date of Decision ... 22.03.2019



Dr. Shams Ur Rehman son of Zahir Gul, Officers of Health Service Management Cadre (BPS-17) Government of Khyber Pakhtunkhwa Peshawar. ... (Appellant)

VERSUS

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

Present.

QAZI JAWAD EHSANULLAH,
Advocate.

... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney

... For official respondents.

MR. NOOR MUHAMMAD KHATTAK,
Advocate

... For private respondents
Nos. 3 to 90.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER


JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant judgment shall also dispose of the following appeals as common question of law and facts has been raised through all the appeals.

Besides, the grievance of appellants is also similar in nature:-

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Peshawar


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- (2) Appeal No. 831/2019 (Dr. Haris Mustaf Vs. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar and others.)
- (3) Appeal No. 832/2018 (Dr. S. Irfan Ali Shah Vs. -do-
- (4) Appeal No. 833/2018 (Dr. Inayat Ur Rahman Vs. -do-
- (5) Appeal No. 834/2018 (Dr. Farhad Iqbal Vs. -do-
- (6) Appeal No. 835/2018 (Dr. Kifayat Ullah Vs. -do-
- (7) Appeal No. 836/2018 (Dr. Attaullah Vs. -do-
- (8) Appeal No. 837/2018 (Dr. Liaqat Ali Vs. -do-
- (9) Appeal No. 838/2018 (Dr. Hamza Abbas Khan Vs. -do-
- (10) Appeal No. 839/2018 (Dr. Mehreen Aziz Awan Vs. -do-

2. The averments noted in the memoranda of appeals are to the effect that the appellants are civil servants and members of the Health Services Management Cadre of the Government of Khyber Pakhtunkhwa created under the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, brought into effect on 11.12.2008. The appellants are aggrieved of the notification issued by Government of Khyber Pakhtunkhwa on 07.05.2018, whereby, respondents No. 3 to 90 have been absorbed in the Management Cadre of the Health Services by way of so many transfers from General Cadre in the Health Department of Government of Khyber Pakhtunkhwa. The appellants submitted departmental appeal against the impugned order/notification which was decided by the official respondents on 25.05.2018. The appeal was considered devoid of merits, therefore, was not acceded to hence the appellants have preferred the appeals in hand.

3. We have heard learned counsel for the appellants, learned counsel for private respondents No. 3 to 90 and learned Deputy District Attorney on behalf of respondents No. 1 and 2. Relevant record was also gone through with the valuable assistance of learned counsel for the parties.

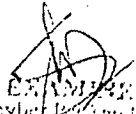
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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

It was contended by learned counsel for the appellants that the impugned notification dated 07.05.2018 was not only the result of misconception and illegality, it had also served as the back door entry for respondents No. 3 to 90. The respondents, at the time when the North-West Frontier Province Health (Management) Service Rules, 2008 were promulgated, had the requisite qualification under the rules but did not opt for their absorption in the Management Cadre. Similarly, some of them did not have the requisite qualification and acquired it later but not in the prescribed cushion period provided for the purpose through the amending notification dated 10.05.2017. It was also the argument of learned counsel that the absorption of the said respondents, through notification dated 07.05.2018, had practically and adversely affected the services of appellants in terms of seniority etc. Learned counsel in support of his arguments relied on judgment reported as 2013-SCMR-1752.

Learned counsel for private respondents, while controverting the arguments from other side, raised certain objections. He contended that the issue raised by appellant was not competent in view of Section 11 of CPC as well as Rule 3 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 as the proposition already stood decided by the court of competent jurisdiction. It was further objected that the departmental appeal was jointly filed by the appellants which was not allowable under Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. Learned counsel also raised the issue of limitation and stated that the appeals in hand were not preferred within the time prescribed for the purpose. He, however, withdrew from this objection when referred to the date of decision of departmental appeal as 25.5.2018 and filing of appeals in hand on 22.6.2018. It was also the argument of learned counsel for private respondents that the notification regarding promulgation of the North-West Frontier Province Health (Management) Service Rules, 2008

ATTESTED


 Attestor
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar



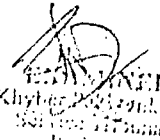
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was published in the official gazette on 02.11.2016, therefore, the provisions of the rules were to be given effect from the said date. In his view the substance contained in Rule 10 thereof, whereby the officers of General Cadre were given option for absorption into Management Cadre, was to be enlarged to a term of two years from the said date in view of the amendments incorporated in the rules on 10.05.2017. The impugned notification dated 07.05.2018 and the amendment in the rules brought about on 10.05.2017 were not exceptionable, it was added.

Learned Deputy District Attorney concurred with the learned counsel for private respondents No. 3 to 90.

4. In order to recapitulate the facts relevant for the purpose of appeals in hand it shall be useful to trace the background of amendment brought about in the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008. The available record suggests that one Dr. Sher Muhammad preferred an appeal before this Tribunal on 22.2.2010, wherein, the notification regarding promulgation of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 was questioned, inter-alia, on the ground that no chance/time period was provided therein for improvement of qualification of the appellant in order to qualify for absorption to the Management Cadre from General Cadre. His chances of further promotion were, therefore, denied through the rules. Rule 10 of the Rules 2008 originally read as follows:-

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Khyber Pakhtunkhwa
Tribunal,
Peshawar

"10. One time exercise (1) Notwithstanding anything contained in the provisions 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 and Management or equivalent Master's Degree/Diploma

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in Health Management or allowed 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, training/courses in the relevant field and managerial experience, as such, shall be taken into consideration."

This Tribunal, while deciding the said appeal, observed that Rule 10 did not provide any cushion period and denied chances to improve qualification for joining the Management Cadre to the appellant. The same be modified to the extent that two years cushion period be allowed to all those who wished to improve qualification as per NWFP Health (Management) Service Rules and to join Management Cadre, if they succeeded in acquiring the requisite qualification. It was further noted that the decision, however, did not entitle the appellant and others not having the requisite qualification for posting in Management Cadre posts but only provided them a cushion period and if they acquired the requisite qualification within two years from the date of the decision they may opt and join Management Cadre without effecting their seniority/service. The notification dated 13.12.2008 was, therefore, modified and the appeal was dispose of. The matter was thereafter, taken before the August Supreme Court of Pakistan in Civil Appeals No. 320 - 334 of 2012 and Civil Appeals No. 126-P to 130-P of 2013. The said appeals were decided on 03.11.2016 and in the order the following was, inter-alia, noted by the apex court:-

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"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 at all 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 period joining fresh cadre is relegated to the lowest position of that cadre. Thus, there seems to be hardly any reason muchless justinable 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."

5. It appears that in pursuance to the judgments of this Tribunal as well as of the apex court an amendment was made in the rules of 2008, whereby, in sub-rule 2 of Rule 10 a second proviso was added. The amendment reads as follow:-

"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."

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Peshawar

The impugned notification dated 07.05.2018 made a reference to modified Rule 10 and also the judgments of this Tribunal and of the apex court noted here-in-above.



6. The grievance of appellants is, inter-alia, in terms that under the garb of amendment to the rules the respondents No. 3, 6, 11, 16, 23, 28, 42, 44, 47, 48, 83,


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88 and 89 were provided back door entry and that they were already in possession of the requisite qualification when the rules were enforced in the year, 2008, however, did not opt for absorption due to reasons best known to them. The said averments in Para-8 of the memoranda of appeals were denied as misconceived through reply by respondents No. 3 to 90. Their denial appears to be evasive as being short of specific counter statement of facts. In essence, the grievance of appellants, as laid in the memoranda of appeals, is against the said respondents.

7. The fore-noted history of matter relevant for decision of appeals in hand suggests that the Health (Management) Service Rules 2008 were never declared ultra-vires by any court of law and duly held the field from date of inception. In pursuance to the rules, the appellants were appointed/absorbed in the Management Service. The issue, on the other hand, seems to have arisen after amendment in Rule 10 in view of judgments of this Tribunal and that of apex court when the same was misinterpreted and misapplied in order to provide cushion period of two years to those officials who were duly qualified for absorption into the Management Cadre under Rule 10 of N.W.F.P Health (Management) Service Rules, 2008 read with Schedule-I thereto. By virtue of amendment dated 10.05.2017, only the officers of the General Cadre who were in regular and continuous service, were provided opportunity to improve their qualification as required by the Rules of 2008 in order to exercise the option under the rules. By no stretch of imagination,

ATTESTED

the amendment ever meant to include the officers who were qualified enough for their absorption into the Management cadre after the promulgation of the rules in 2008 but did not opt for the purpose. The language of Rule 10 itself suggested that it was a onetime exercise to fill in the posts in the Management Cadre from amongst the officers of General Cadre. Through such provisions the scope of Rule 10 was enlarged to include the officers who could improve their qualification in


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Service Tribunal,
Peshawar

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order to match the requirements contained in the rules within a period of two years and not otherwise. In such view of the matter, it can safely be held that the respondents who fell into the category of officers having prescribed qualification at the relevant time but failed to opt for their absorption into the management cadre before the coming into force of amended rules on 20.05.2017, were not eligible for the purpose of absorption subsequent to the amendment in the rules.

8. As a result of the above discussion, the appeals in hand are allowed to the effect noted herein above.

The parties are left to bear their respective costs. File be consigned to the record room.

sd/-
(AHMAD HASSAN)
MEMBER

sd/-
(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
22.03.2019

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 05-01-19
Number of Pages 3600
Copying Fee 20.00
Urgent 2.00
Total 22.00
Name of Applicant [Signature]
Date of Constitution of Copy 05-01-19
Date of Delivery of Copy 05-01-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

65



Service Appeal No. 834 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1066

Dated 22/06/2018

Dr. Fahad Iqbal
Son of Muhammad Iqbal
Officers of Health Service Management Cadre (BPS-17)
Government of Khyber Pakhtunkhwa Peshawar

.....APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary
Civil Secretariat Peshawar
2. The Secretary Health
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar
3. Muhammad Saleem s/o Inayat ur Rahman
4. Muhammad Ismail s/o Said Muhammad
5. Shahid Mehmood s/o Sardar Muhammad Aslam
6. Muhammad Mustafa Alam s/o Nasrullah Jan
7. Khalil ur Rehman s/o Ali Rehman
8. Mohammad Shuaib s/o Mohammad Ajab
9. Mohammad Munib s/o Mohammad Sher Ali Khan
10. S. Muhammad Taimur Shah s/o Pir Ferooz Shah
11. Firdos Jabeen s/o Muhammad Aslam Khan
12. Kalimullah Khan s/o Eid Gul
13. Niaz Mohammad s/o Dost Mohammad
14. Zafrullah Khan s/o Ghulam Sarwar
15. Saeed ur Rahman s/o Haji Fazli Rahman

Filed to-day

Registrar

22/6/18

RESUBMITTED TO-DAY
FOR FILE

Registrar 22/6/18

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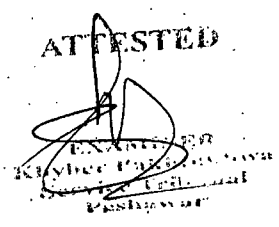
Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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16. Aamir Israr s/o Israr Mohammad Khan
17. Syed Shaida Hussain Shah Bukhari s/o Syed Fida Hussain Shah Bukhari
18. Muhammad Shafiq s/o Akbar Gul
19. Mohammad Rahim s/o Gul Rahim
20. Mushtaq Ahmad s/o Fazal Khan
21. Shabnum Khawas d/o Lal Khawas Khan
22. Ahmed Tariq s/o Tariq Tanvir
23. Khan Askar s/o Mohammad Askar
24. Faisal Malik s/o Fazli Malik Sarim
25. Bilal Bahrawar Khan s/o Bahrawar Khan
26. Tanveer Inam s/o Inam Ullah
27. Mohammad Saleem Khan s/o Fazali Rahim Khan
28. Alamgir Khan s/o Darwesh Khan
29. Majid Khan s/o Muhammad Hamayun Khan
30. Ihsan Ullah s/o Ghulam Muhammad
31. Aurang Zeb Afridi s/o Ghulam Hussain Afridi
32. Shafiul Mulk s/o Hazrat Mulk Khan
33. Mohammad Khalil Akhter s/o Mohammad Yousaf Khan
34. Farhad Khan s/o Pordil Khan
35. Muhammad Farid s/o Khaista Azam
36. Amir Rafiq Khattak s/o M. Rafiq Khattak
37. Jahanzeb Khan s/o Ihsan Ullah Khan
38. Alif Jan s/o Amir Jan
39. Makhdoom Safdar s/o Safdar Hussain Afghan
40. Shumaila Malik d/o Malik Farid Khan
41. Mohammad Kamal s/o Mohammad Sharif Khan
42. Noor Saeed Khan s/o Mohammad Saeed Khan
43. Aziz Khan s/o Jafar Khan
44. Ghulam Rasool Khan s/o Shadi Gul Khan
45. Mohammad Iqbal Javed s/o H. Fateh Ullah Khan

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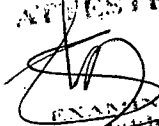
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DISTRICT COUNCIL
PESHAWAR

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46. Kamran Zakria s/o Ghulam Zakria Khan
47. Sheikh Mohammad Farooq Azam s/o Shaikh Mohammad Bashir Gohar
48. Naimat Ullah Zia s/o Amir Shah
49. Muhammad Israr ul-Haq s/o Abdur Rashid Khan
50. Qasim Abbas s/o Saif ur Rehman
51. Mohammad Hayat s/o Haji Akbar Gul
52. Muhammad Ibrahim Khan s/o Abdul Haleem Khan
53. Sheraz Ahmad Khan s/o Muhammad Akram Khan
54. Adnan Khan s/o Muhammad Zahir Shah
55. Syed Ijaz Ali Shah s/o Syed Abdul Qayyum Shah
56. Fazal Majeed s/o Muhammad Aslam
57. Muhammad Bilal Khan s/o Muhammad Daud
58. Majid Saleem s/o Allah Dad Khan
59. Fazal Qayum s/o Abdur Rahman
60. Ali Asghar Khan s/o Abdul Akbar Khan
61. Muhammad Azhar Shah s/o Asrar ul Arifin
62. Saira Jabeen Shah s/o Amt Ali Shah
63. Roshan Zada s/o Said Latif
64. Javid Iqbal s/o Amir Bahadar
65. Shaima Malik d/o Dr Fazli Malik Sarim
66. Pirzada s/o Bahadar
67. Shahab Ahmad s/o Abdul Rahman
68. Muhammad Dost Khan s/o Zahir Gul
69. Muhammad Riaz s/o Gohar Khan
70. Kashmir Khan s/o Aslam Khan
71. Tariq Hayat s/o Fazal Hayat Taj
72. Muhammad Sohail Farooqi s/o Muhammad Aqeel Farooqi
73. Abdul Waheed s/o Abdul Hamid
74. Hafizullah Khan s/o Amanullah Khan
75. Zakir Hussain s/o Hakim Khan

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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76. Qazi Sabihuddin s/o Qazi Ghulam Mustafa
77. Ijaz Ahmad s/o Bashir Ahmad
78. Sher Muhammad s/o Shah Muhammad
79. Wakeel Muhammad s/o Tajul Malook
80. Suffian Khan s/o Muhammad Tanveer
81. Muhammad Naeem s/o Habib Ullah Khan
82. Ikramullah s/o Amanullah Khan
83. Muhammad Shoaib s/o Azizur Rehman
84. Muhammad Riaz Tanoli s/o Said Ozar
85. Inayatullah Khan s/o Saifullah Khan
86. Wazir Khan s/o Rookam Khan
87. Uzma Jabeen d/o Taj Muhammad
88. Dildar Khan s/o Abdul Ghaffar
89. Mohsin Ahmad s/o Taj Muhammad Khan
90. Abbas Khan s/o Ajab Khan

All General Cadre doctors newly inducted into Health Management Cadre, Health Department Khyber Pakhtunkhwa *Care of D.G Health Office*

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974

Respectfully sheweth;

1. Appellant herein is a Civil Servant being a members of the Health Services Management Cadre of the Govt. of Khyber Pakhtunkhwa, which is the creation and outcome of Khyber Pakhtunkhwa Health (Management) Services Rules, 2008 promulgated on 11.12.2008. He is serving in BPS-17 and his date of appointment and place of current postings is distinctly mentioned in his appointment letters and posting orders respectively [Annexure-'A'].

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Khyber Pakhtunkhwa
Health Services Management
Cadre

2. Appellant is aggrieved of the Notification issued by the Govt. of Khyber Pakhtunkhwa *vide* No. SOH(E-V14-20/2018 dated 07.05.2018 [Annexure- 'B'], whereby Respondents No. 3-90 have been inducted / absorbed in the Management Cadre of the Health Services by way of permanent transfer from General Cadre of the Health Department of the Govt. of Khyber Pakhtunkhwa. Departmental appeal there against was also filed by the present appellant on 08.05.2018, pursuant to the order of the Supreme Court of Pakistan while hearing Human Rights cases at Peshawar Registry on the same date whereby it was ordered that the applications filed by the present appellant before the apex court was to be treated as Departmental Appeals / Representations and was to be answered in 10 days by the department. Thus, the Service Appeal / Representation was answered by the official respondents on 25.05.2018 [Annexure- 'C'], whereby the genuine plea of the appellant was turned down and was not exceeded to, hence this appeal.
3. To mention the background of the case, it is stated that the Government of Khyber Pakhtunkhwa had, in order to achieve better results for health care services delivery, separated administrative and clinical cadres in the Health Department, thereby constituting a separate Management Cadre by promulgating Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 (hereinafter referred to as 'the Rules') *vide* Notification No. SOH (EV) 14-20/08 dated 11.12.2008 [Annexure- 'D']. Rule 4 thereof read with Schedule II has provided method of recruitment and appointment in the aforesaid Management Cadre. And for those who were then serving in the general cadre of the Health Department, a one-time exercise of appointment by way of permanent transfer was provided in Rule 10 with certain prescribed qualification.
4. This mechanism for induction by way of permanent transfer so prescribed in Rule 10 *ibid* was nevertheless a one-time exercise, and was not to be enjoyed or taken benefit of for all times to come. However, it seems that the way things have gone by, the induction by way of such one-time absorption (by way of permanent transfer) has been made to last and subsist forever. And because this had badly affected the progression, promotion, service carrier and prospects to flourish in their own cadre / track for those who are directly recruited / appointed through Public Service Commission, i.e. the appellant herein, they

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Khyber Pakhtunkhwa
Public Service Commission
Peshawar

have been agitating their cause with solid and convincing reasons but to no avail so far.

5. Coming back to Rule 10 *ibid*, various Notifications and orders issued by Government of Khyber Pakhtunkhwa since its inception [Annexure-'E'] would show that ideally speaking induction by way of absorption (through permanent transfer) from General to Management Cadre should have been stopped *w. e. f.* 18.10.2010. However, some of the respondents who, at the relevant and crucial time, were employed in other lucrative jobs / various projects of the Health Department, had decided to protract and drag the matter for years. And this object, they had achieved by way of dragging govt. into litigation at various *fora*. At the very outset Writ Petition No. 2382/2009 was filed in the Peshawar High Court, Peshawar, questioning the *vires* of *the Rules*. Said Writ Petition was dismissed in *limini* on 10.11.2009 [Annexure-'F'], whereby the departmental authorities were directed to decide the departmental representation so filed within a month. Identical orders were passed when august Peshawar High Court, Peshawar was approached by some of the respondents in COC No. 10/2010 in the aforesaid writ Petition, which contempt case was disposed of on 09.02.2010 [Annexure-'G'].
6. Thereafter Service Appeal No. 513/2010 was preferred before this august Tribunal, which was decided on 03.01.2012 [Annexure-'H'] on the following terms;

"Section 10 of the said rules does not provide any cushion period and deny 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 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".

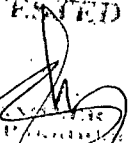
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Signature
 Director General
 Health Services
 Peshawar

7. The aforesaid decision of the Tribunal was assailed in the Supreme Court of Pakistan through Civil Appeals Nos. 320-324 of 2012 and Nos. 126-P to 130-P Of 2013, which appeals were decided on 03.11.2016 [Annexure-'I'], whereby the judgment of the Tribunal was maintained, and as to the issue of seniority it was held that it would be counted from the date when respondents join Management Cadre and not from any earlier period. Thereafter, a summary was initiated at the level of provincial government as to how an option of absorption as provided in Rule 10 *ibid* should be dealt with, and at last *the Rules* appeared to have been amended, on 10.05.2017 [Annexure-'J'], albeit not by the competent authority, and now a *proviso* was inserted in Rule 10 *ibid* only for the purposes of providing an opportunity 'to improve qualification' for those in the general cadre who were there in service but did not have the prescribed minimum qualification on the date when Rules were initially promulgated, and then such officials of general cadre were to exercise option for absorption within a period of two years after fulfilling the qualification benchmark as prescribed. Thereafter, through advertisements and publications in various dailies [Annexure-'K'], respondents were asked to submit option for absorption in the Management Cadre, and upon receiving the same impugned order dated 07.05.2018 was issued thereby permanently absorbing the private respondents in the Management Cadre in various pay scales as mentioned therein.

8. It is pertinent to mention that two years cushion period as provided in the judgment dated 03.01.2012 of this august Tribunal as well as given in the *proviso* added in Rule 10 *ibid* was meant only for those who were in the continuous services of the general cadre but did not have the requisite qualification at the relevant time so as to enable them to acquire the prescribed qualification during the cushion period and then to apply for absorption within the given time. This was clearly not meant to serve as a back door entry for those in the general cadre who at the relevant time did possess the requisite qualification at the time when *the Rules* were enforced back in 2008, but they did not, out of their own ulterior motives, opt for absorption when they were called on to do so back in the year 2009-10. This includes respondent no. 3, 6, 11, 16, 23, 28, 42, 44, 47, 48, 83, 88 and 89 who were holding the requisite required qualification when *the Rules* were enforced on 11.12.2008. As to the respondent no. 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 27, 30, 31, 32,

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 Member Provincial
 Services
 Position



33, 34, 35, 36, 37, 41, 43, 45, 52, 55, 56, 57, 61, 63, 64, 67, 68, 69, 70, 73, 75, 76, 77, 78, 79, 81, 82, 84, 85, 86, 87 and 90, they were serving in the General Cadre of the Health Department but they had acquired the requisite qualification thereafter have also been inducted in the Management Cadre through the impugned Notification. It is rather more exasperating to note that there are some of the respondents (Respondent No. 21, 22, 24, 25, 26, 29, 38, 39, 40, 46, 49, 50, 51, 53, 54, 58, 59, 60, 62, 65, 66, 71, 72, 74 and 80), who were not even in service and were inducted in General Cadre of Health Department long time after the issue of one time absorption of such general cadre doctors had arisen. These respondents had also been given a back door because they have recently joined the general cadre services as mentioned in the attached sheet [Annexure-'L'] showing their appointment dates, and the back door entry of absorption has been allowed to continue and flourish for all times to come. This particularly was not the intent and object of *Rule 10* of the original un-amended *Rules* and judgment of the August tribunal. And now by making amendment therein *vide* Notification dated 10.05.2017, the real purpose and intent thereof appears to have been completely distorted and outraged.

9. On this very score the impugned Notification dated 07.05.2018 appears to be misconceived and illegal, because it has actually served as a back door entry for respondent No 3-90, as at the relevant time when *the Rules* were promulgated, on 11.12.2008, they either had the requisite qualification but not opted to go for the absorption in the Management Cadre, or did not had the qualification and acquired it later but not in the prescribed cushion period for improvement in qualification, or even those who were initially appointed in the general cadre after *the Rules* were promulgated.
10. More so, the impugned Notification dated 07.05.2018 or any other dispensation in the form of amending Notification No. SOH (E-V) 4-20/2017 dated 10.05.2017 are *prima facie* are illegal and contrary what has been ruled by the august Supreme Court of Pakistan in the matter of '*Contempt Proceeding against Chief Secretary Sindh and others*' reported in 2013 SCMR 1752, whereby not only similar inductions / appointments of civil servants from non-cadre posts to a cadre posts were held to be illegal but various legislations and Statutes of Govt. of Sindh allowing and protecting such absorption / induction were held to be *ultra vires* the Constitution. The

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idea behind such judicial pronouncement was that permanent absorption of non-cadre civil servant to cadre posts would affect promotion prospects, progression and service carrier of the cadre civil servant. Same is the case here, as most of the respondents from general clinical cadre, who have been absorbed in BPS-18 and above, have blocked all chances of progression and promotion for the present appellant serving in BPS-17 as having been appointed in the Management Cadre by way of initial appointment as prescribed in *the Rules*.

11. It may also be stated at this juncture that in view of Art. 129 of the Constitution for the purposes of exercise of executive authority provincial govt. has been described as one exercised through *Chief Minister and the Cabinet*. Now, in this case Notification No. SOH (E-V) 4-20/2017 dated 10.05.2017 amending *the Rules* has been purportedly issued by the Govt. but without the concurrence of *Chief Minister and the Cabinet* both. The amendment thus brought in *the Rules* through this Notification does not exist in the eye of law and is *coram non judice*.

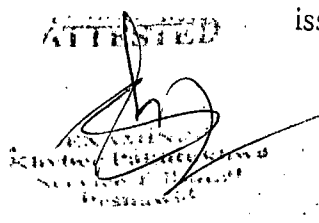
12. Having said all that, it is more than crystal clear that appellant has not been dealt with in accordance with law. Their departmental appeal too has been wrongly decided and relevant considerations to decide the same have been conveniently ignored. The indulgence of this august Tribunal is therefore all the more necessary and indispensable.

It is, therefore, prayed that on acceptance of this appeal this august Tribunal may be pleased to;

A. *Set-aside* and *quash* Notification No. SOH(E-V)14-20/2018 dated 07.05.2018 by declaring the permanent absorption of Respondents 3-90 in the Management Cadre as illegal and *ultra vires*, and

B. *Declare* that Notification No. SOH (E-V) 4-20/2017 dated 10.05.2017 is *ultra vires* the Constitution of the Islamic Republic of Pakistan, 1973 with particular reference to its Art. 4, 9, 10-A, 25 and has also been issued without jurisdiction and is *coram non judice*, and / or

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C. Grant any other relief considered just and appropriate in the given circumstances of the case.

[Signature]
Appellant

Through

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Qazi Jawad Ehsanullah
Advocate Supreme Court

AFFIDAVIT

I Dr. Fahad Iqbal Son of Muhammad Iqbal Officers of Health Service Management Cadre (BPS-17) Government of Khyber Pakhtunkhwa Peshawar Affirm and declare on oath that the content of this service appeal is true and correct to the best of my knowledge, information and belief nothing has been cancelled to this Hon'ble Service Tribunal.

[Signature]
DEPONENT



Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 25/01/22
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Fees 46/-
Date of Delivery of Copy 25/01/22
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