
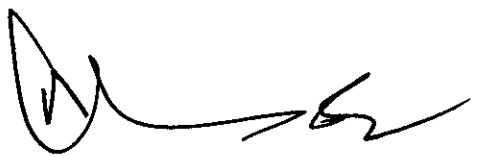


13th Oct., 2022 01. None present on behalf of the appellant. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

02. Called several times, till last hours of the court but nobody turned up on behalf of the appellant. The appeal is, therefore, dismissed in default. Consign.

03. **Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of October, 2022.**


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

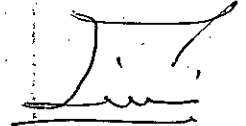
06.07.2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Worthy Chairman was one of the Member of the D.B, which had posted the appeal for order for today, therefore, the appeal in hand may be fixed for order before the concerned D.B on 13.07.2022.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

13th July, 2022

Mr. Naqibullah Khattak, Advocate, learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned counsel for the appellant argued the case to some extent when certain points were raised for which he seeks time to further prepare the case. Adjourned. To come up for further arguments on 14.09.2022 before the D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

14.09.2022

Junior to counsel for appellant present.

Kabir Ullah Khattak, learned Additional Advocate General for respondents for respondents present.

File to come up alongwith connected Service Appeal No.203/2017 titled "Muhammad Farid Khattak Vs. Government of Khyber Pakhtunkhwa" on 13.10.2022 before D.B.




(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member(J)

11.04.2022 Junior to counsel for the appellant present. Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

File to come up alongwith connected Service Appeal No. 203/2017 on 31.05.2022 for arguments before D.B.



(Rozina Rehman)
Member (J)

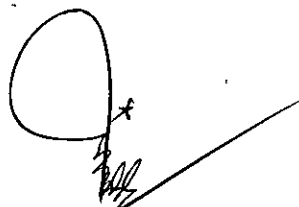


Chairman

31th May, 2022

Appellant alongwith junior of learned counsel for the appellant present. Kabirullah Khattak, Addl: AG for respondents present.

Junior of learned counsel for the appellant submitted an application for adjournment wherein he stated that learned senior counsel for the appellant is indisposed today and could not appear before the Tribunal. On previous date last opportunity was given to the appellant with further observation that in case of failure to argue the appeal, it will be decided on the basis of available record but today again adjournment is sought. To come up for order before the D.B on 06.07.2022. Learned counsel for the appellant may argue the case before the announcement.



(Mian Muhammad)
Member(E)




(Kalim Arshad Khan)
Chairman

07.06.2021

Appellant in person present. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to general strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments before the D.B on 04.10.2021.

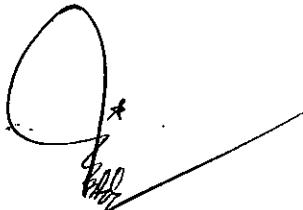

(ATIQU UR REHMAN WAZIR)
MEMBER (E)


(SALAH-UD-DIN)
MEMBER(J)

04.10.2021

Appellant is present in person. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

The appellant seeks adjournment with the reason that his counsel is not available today due to death of his relative. Accorded. To come up for arguments on 03.01.2022 before the D.B.



(Mian Muhammad)
Member(E)


Chairman

03.01.2022

Junior to counsel for the appellant and Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Former requests for adjournment due to engagement of learned senior counsel for the appellant before the Honourable High Court today. Request accorded. Case to come up for arguments on 11.04.2022 before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)

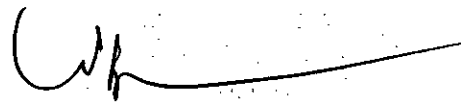

Chairman

30.11.2020

Appellant present through counsel.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 05.02.2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

05.02.2021

On account of Public Holiday (Kashmir Day), the case is adjourned to 08.03.2021 for the same.

08.03.2021

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Due to non-availability of D.B, case is adjourned to 07.06.2021 for the same as before.

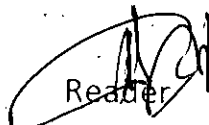


Reader

11-5 .2020

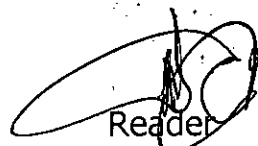
Due to COVID19, the case is adjourned to

28/7/2020 for the same as before.


Reader

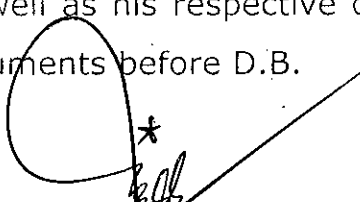
28.07.2020


Due to COVID-19, the case is adjourned. To come for the same on 21.09.2020 before D.B.


Reader

21.09.2020

Appellant has not forth come at the moment i.e 02:13 P.M. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present. The last two adjournments were made on the basis of note Reader due to spread of disease of COVID-19, therefore; in the circumstances we deemed it appropriate to issue notice to appellant as well as his respective counsel for 30.11.2020. File to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

03.12.2019

Syed Uzma Advocate on behalf of counsel for the appellant and Mr. Ziaullah, DDA for the respondents present.

A request for adjournment is made due to non-availability of learned counsel for the appellant. Adjourned to 23.01.2020 for arguments before the D.B.


Member


Chairman

23.01.2020

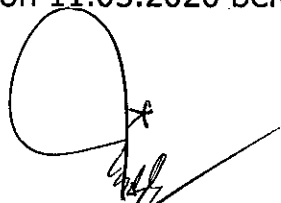
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 11.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.03.2020

Counsel for the appellant present. Asst: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.05.2020 before D.B.


Member


Member

12.06.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

The appellant requests for adjournment due to non-availability of his learned counsel who is stated to be engaged before the Honourable High Court today.

Adjourned to 22.07.2019 for arguments before the D.B.


Member


Chairman

22.07.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

19.09.2019

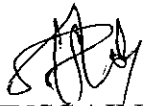
Anwar Shah Advocate on behalf of Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Anwar Shah Advocate requested for adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 30.10.2019 before D.B.


Member


Member

30.09.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 30.10.2019 for arguments before D.B.



(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

30.10.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 03.12.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

03.12.2019

Appellant in person and Mr. Ziaullah, DDA for the respondents present.

The appellant has submitted Wakalatnama in favour of Mr. Muhammad Adam Khan, Advocate and requested for adjournment due to non-availability of his learned counsel.

Adjourned to 23.01.2020 for arguments before D.B.

Member

Chairman

11.01.2019

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Hazrat Shah Superintendent for the respondents present. Appellant requested for adjournment as his counsel is not in attendance Adjourned. To come up for arguments on 02.02.2019 before D.B.


Member


Member

06.03.2019

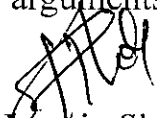
Appellant in person present. Learned counsel for the appellant is absent. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not in attendance today. Adjourn. To come up for arguments on 18.04.2019 before D.B.



(M. HAMID MUGHAL)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

18.04.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Nasir Senior Clerk for the respondent present. Due to general strike of the bar council the case is adjourned. To come up for arguments on 12.06.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

04.07.2018

Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Hazrat Shah, Supdt for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Kundi)
Member

30.08.2018

Appellant in person and Mr. Riaz Ahmad Painsdakhel, Assistant AG for the respondents present. Appellant seeks adjournment on the ground that his counsel is ill and cannot attend the Tribunal today. Adjourned. To come up for arguments on 12.10.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

12.10.2018


Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant made a request for adjournment. Adjourned. To come up for arguments on 21.11.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

21.11.2018

Since 21.11.2018 has been declared as public holiday on account of 12th Rabi-ul-Awal. Therefore, the case is adjourn. To come on 11.01.2019 before D.B.


Reader

14.12.2017

Clerk to counsel for the appellant present. Asst: AG alongwith Mr. Noor Ali, Legal Officer for respondents present. Written reply on behalf of respondents no 1 and 2 submitted. None present on behalf of respondents no. 3 and 4 nor their replies submitted, hence proceeded Ex-parte. To come up for arguments on 14.02.2018 before D.B.


(AHMAD HASSAN)
MEMBER

14.02.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 18.04.2018 before D.B.

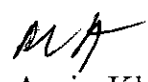

Member


Chairman

18.04.2018


Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.07.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

14.11.2017

Counsel for the appellant present. Mr. Kabir Ullah Khattak, Addl: Advocate General alongwith Yar Gul, Assistant for the respondents also present. Written reply on behalf of respondents not submitted despite last opportunity. Learned Addl: AG requested for further adjournment for filing of written reply. Last opportunity is further extended subject to payment of costs of Rs. 2000/- which shall be borne by the respondents from their own pockets. To come for written reply/comments and costs of Rs. 2000/- on 14/12/17 before S.B.


(Gul Zeb Khan)
Member (E)

14.12.2017

Counsel for the appellant present. Asst: AG alongwith Mr. Noor Ali, Legal Officer for respondents present. Written reply on behalf of respondents no. 1 and 2 submitted. None present on behalf of respondents no. 3 and 4 nor their replies submitted despite of extended numerous chances. Right of defense of respondents is struck off. No further opportunities shall be given to the respondents no. 3 and 4. The appeal is assigned to D.B for rejoinder and final hearing on 14.02.2018.

(AHMAD HASSAN)
MEMBER

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No 204/2017

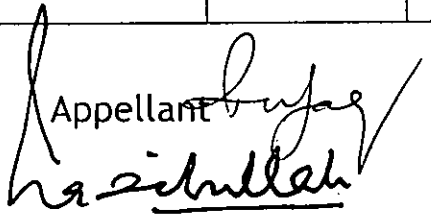
Muafaq Ahmad.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)

INDEX

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Reply rejoinder	-	01 - 05
2.	Affidavit	-	06

Through: 
(NAQIBULLAH KHATTAK)
Advocate,
High Court, Peshawar
Cell # 0343-9122233

Dated: -16-03-2018

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:
Service Appeal No 204/2017

Rufaq Ahmad.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)

REJOINDER ON BEHALF OF APPELLANT TO THE COMMENTS OF
RESPONDENTS NO 1 AND 2

Respectfully Sheweth:-

Rejoinder on behalf of Appellant to the comments of
Respondents No 1 to 2 is submitted hereunder:-

PRELIMINARY OBJECTIONS:-

- A) All the preliminary objections from serial No 1 to serial No 8 are incorrect, hence denied. The Appellant has cause of action/locus standi. This Honourable Tribunal has jurisdiction to adjudicate upon the instant service appeal, the appeal is not against the law/rules, nothing has been concealed from this Honourable Tribunal by the Appellant and the appeal is within time.

ON FACTS:-

1 to 4 Paras No 1 to 4 needs no rejoinder.

5. Comments of Respondents are incorrect in its present form. When once a notification dated 10-05-2006 was admittedly issued by the competent authority then it cannot be taken back by subsequent notification dated 25th August, 2006 in view of doctrine of locus poententia. Besides beneficial notification cannot be withdrawn by subsequent executive order, which is detrimental to the interest of the Civil Servant. The subsequent notification dated 25-08-2006 is not applicable to the existing servicing civil servants, but instead such like notification is applicable to the employees inducted in service subsequently. The Appellant should not suffer for the mistake of his serious as vested right accrued to the Appellant with notification dated 10-05-2,006, which cannot be snatched through subsequent notification dated 25-08-2006. The Appellant became due for promotion/ up-gradation w.e.f 10-05-2006, which was not activated till 24-08-2006 when notification was issued on 25-8-2006, hence the Appellant is no where seen at fault.

6 & 7. Paras No 6 and 7 needs no rejoinder.

8. Comments are incorrect. The Appellant was never considered for promotion in the light of notification dated 10-⁰⁵5-2006. Had the so-called committee constituted, they would have necessarily been promoted in the light of notification dated 10-5-2006.
9. Comments of Respondents to this para are not correct, while the contention/averments in this para in the main service appeal are correct.
10. Comments of the Respondents to this para are incorrect. The Appellant was in service and if supposed he was not in service but was due for promotion, there is no hurdle in granting anti-dated promotion as held by the apex Court per precedent reported as 2015 SCMR 1040. Hence, the averments of the Appellant to this para in the main service appeal are correct and in accordance with law.
11. Comments of Respondents are evasive and an attempt to misguide this Honourable Tribunal. So, seniority list was produced and annexed with the comment to support their contention. The act of the Respondents is violative of the prevalent service laws. If the Appellant is promoted/upgraded, it would not prejudice the right of any other civil servant but the anti-dated promotion up-gradation would be in the interest of justice and the same

would cause increase in the pensionary benefits of the Appellant. Needless to add here that it has been held by the apex Court in its judgment reported as PLD 2003 (SC) 724 and 2001 PLC (SC) 1153 that if the case is otherwise fit then technicalities including limitation would give way to complete justice but in Appellant case, even his departmental appeal was not replied as yet. It is further added that while in service, the Appellant agitated for his promotion/up-gradation but all in vain and the Appellant invoked the constitutional jurisdiction of Peshawar High Court, Peshawar for redressal of his grievances which Honourable Peshawar High Court sent the writ to this Honourable Tribunal for adjudication.

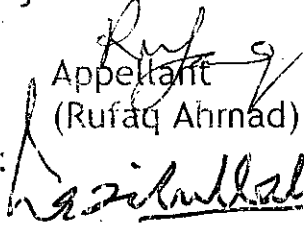
12. Averments in the main service appeal to this para are correct, while the comments of Respondents are denied being incorrect.
13. Comments of Respondents are denied being incorrect.

GROUNDS:-

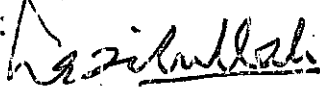
Comments of 'A' 'B' 'C' and 'D' being incorrect are denied.

In the facts above, the law points have been stated in the rejoinder as well as in the main service appeal.

It is; therefore, humbly prayed that in the light of the Re-joinder, the comments of Respondents may graciously be dismissed and in the light of Respondents notification No SO H-III/8-60/05 dated 10⁰⁵-2006, they may graciously be directed for grant of anti-dated promotion/up-gradation in the vast interest of justice.


Appellant
(Rufaq Ahmad)

Through:


(NAQIBULLAH KHATTAK)
Advocate,
High Court, Peshawar

Dated: -16-03-2018

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:
Service Appeal No 204/2017

Rufaq Ahmad.....(Appellant)

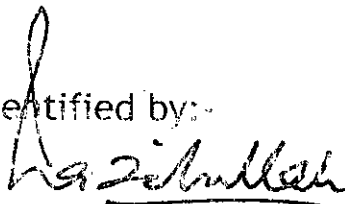
VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)


COUNTER AFFIDAVIT

I, Rufaq Ahmad (Appellant), do hereby solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court willfully or deliberately.

Identified by:-



(NAQIBULLAH KHATTAK)
Advocate
High Court, Peshawar


DEPONENT
TESTED
NAQIBULLAH KHATTAK
ADVOCATE
NOTARY PUBLIC

16/3/18

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:
Service Appeal No 204/2017

Rufaq Ahmad.....(Appellant)

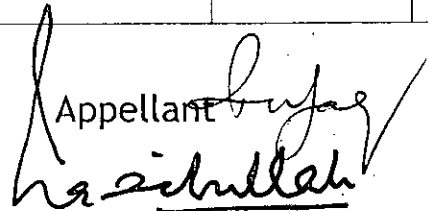
V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)

I N D E X

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Through:


Appellant

(NAQIBULLAH KHATTAK)
Advocate,
High Court, Peshawar
Cell # 0343-9122233

Dated: -16-03-2018

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

In Re:
Service Appeal No 204/2017

Rufaq Ahmad.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)

REJOINDER ON BEHALF OF APPELLANT TO THE COMMENTS OF
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PRELIMINARY OBJECTIONS:-

- A) All the preliminary objections from serial No 1 to serial No 8 are incorrect, hence denied. The Appellant has cause of action/locus standi. This Honourable Tribunal has jurisdiction to adjudicate upon the instant service appeal, the appeal is not against the law/rules, nothing has been concealed from this Honourable Tribunal by the Appellant and the appeal is within time.

ON FACTS:-

1 to 4 Paras No 1 to 4 needs no rejoinder.

5. Comments of Respondents are incorrect in its present form. When once a notification dated 10-05-2006 was admittedly issued by the competent authority then it cannot be taken back by subsequent notification dated 25th August, 2006 in view of doctrine of locus poententia. Besides beneficial notification cannot be withdrawn by subsequent executive order, which is detrimental to the interest of the Civil Servant. The subsequent notification dated 25-08-2006 is not applicable to the existing servicing civil servants, but instead such like notification is applicable to the employees inducted in service subsequently. The Appellant should not suffer for the mistake of his serious as vested right accrued to the Appellant with notification dated 10-05-2,006, which cannot be snatched through subsequent notification dated 25-08-2006. The Appellant became due for promotion/ up-gradation w.e.f 10-05-2006, which was not activated till 24-08-2006 when notification was issued on 25-8-2006, hence the Appellant is no where seen at fault.

6 & 7. Paras No 6 and 7 needs no rejoinder.

- 3 -
8. Comments are incorrect. The Appellant was never considered for promotion in the light of notification dated 10-⁰⁵02-2006. Had the so-called committee constituted, they would have necessarily been promoted in the light of notification dated 10-5-2006.
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 10. Comments of the Respondents to this para are incorrect. The Appellant was in service and if supposed he was not in service but was due for promotion, there is no hurdle in granting anti-dated promotion as held by the apex Court per precedent reported as 2015 SCMR 1040. Hence, the averments of the Appellant to this para in the main service appeal are correct and in accordance with law.
 11. Comments of Respondents are evasive and an attempt to misguide this Honourable Tribunal. So, seniority list was produced and annexed with the comment to support their contention. The act of the Respondents is violative of the prevalent service laws. If the Appellant is promoted/upgraded, it would not prejudice the right of any other civil servant but the anti-dated promotion up-gradation would be in the interest of justice and the same

would cause increase in the pensionary benefits of the Appellant. Needless to add here that it has been held by the apex Court in its judgment reported as PLD 2003 (SC) 724 and 2001 PLC (SC) 1153 that if the case is otherwise fit then technicalities including limitation would give way to complete justice but in Appellant case, even his departmental appeal was not replied as yet. It is further added that while in service, the Appellant agitated for his promotion/up-gradation but all in vain and the Appellant invoked the constitutional jurisdiction of Peshawar High Court, Peshawar for redressal of his grievances which Honourable Peshawar High Court sent the writ to this Honourable Tribunal for adjudication.

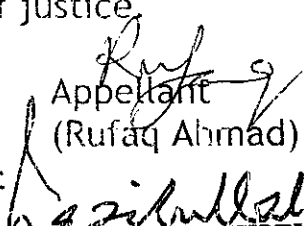
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13. Comments of Respondents are denied being incorrect.

GROUNDS:-

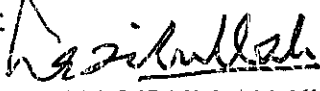
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In the facts above, the law points have been stated in the rejoinder as well as in the main service appeal.

It is, therefore, humbly prayed that in the light of the Re-joinder, the comments of Respondents may graciously be dismissed and in the light of Respondents notification No SO H-III/8-60/05 dated 10⁰⁵-11-2006, they may graciously be directed for grant of anti-dated promotion/up-gradation in the vast interest of justice.


Appellant
(Rufaq Ahmad)

Through:


(NAQIBULLAH KHATTAK)
Advocate,
High Court, Peshawar

Dated: -16-03-2018

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:
Service Appeal No 204/2017

Rufaq Ahmad.....(Appellant)

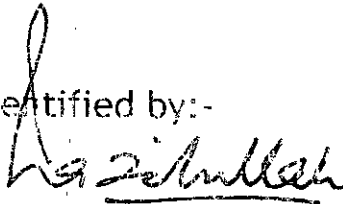
VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat and others.....(Respondents)


COUNTER AFFIDAVIT

I, Rufaq Ahmad (Appellant), do hereby solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court willfully or deliberately.

Identified by:-



(NAQIBULLAH KHATTAK)
Advocate
High Court, Peshawar


DEPONENT
TESTED
NAQIBULLAH KHATTAK
ADVOCATE
HIGH COURT PESHAWAR

16/3/18

25.10.2017

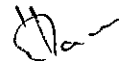
Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Amjid Ali, Assistant for the respondents also present. Written reply on behalf of respondents not submitted despite last opportunity. Learned Additional AG requested for further adjournment for filing of written reply. Last opportunity is further extended subject to payment of costs of Rs. 1000/- which shall be borne by the respondents from their own pockets. Adjourned. To come up for written reply/comments and cost of Rs. 1000/- on 14.11.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

Service Appeal No. 204/2017

12.09.2017

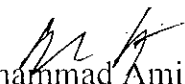
Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Written reply on behalf of respondents not submitted despite last opportunity. Learned Additional AG requested for further adjournment. Another last opportunity is granted. Representative of the department is directed to furnish authority letter on or before the next date. Adjourned. To come up for written reply/comments on 03.10.2017 before S.B.



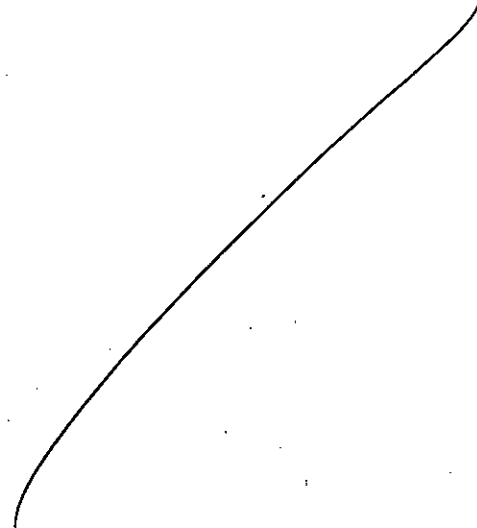
(Muhammad Hamid Mughal)
Member

03.10.2017

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Yar Gul, Senior Clerk for the respondents also present. Written reply on behalf of respondents not submitted despite last opportunity. Learned Deputy District Attorney requested for further adjournment. Again another last opportunity granted. Adjourned. To come up for written reply/comments on 25.10.2017 before S.B.



(Muhammad Amin Khan Kundi)
Member



25.04.2017

Counsel for the appellant and Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 24.05.2017 before S.B.


(Ahmad Hassan)
Member

24.05.2017

Counsel for the appellant and Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 12.07.2017 before S.B.


(Ahmad Hassan)
Member

12.07.2017

None present on behalf of the appellant. Mr. Kabirullah Khattak, Assistant AG for the respondents present. Written reply by respondents not submitted. Learned Assistant AG requested for adjournment. Adjourned. To come up for written reply/comments on 09.08.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

09.08.2017

Appellant in person and Addl:AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. Adjourned. To come up for written reply/comments on 12.09.2017 before S.B.


(Ahmad Hassan)
Member

01.03.2017

Counsel for the appellant. Through instant appeal, appellant has impugned order dated 10.05.2006 against which departmental appeal was filed on 15.05.2008. Since the question of limitation was involved therefore, pre-admission notice be issued to the learned AAG for further assistance. To come up for preliminary arguments on the point of limitation and admissibility on 30.03.2017 before S.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

30.3.2017

Counsel for the appellant & Asstt. AG present.

Learned counsel for the appellant argued that the appellant was serving in the Medical Institution when the policy of appointments and promotion of Paramedics was restructured w.e.f. 27.12.2005 entitling the appellant to promotion as paramedics BPS-17 as one time exercise which policy was notified vide notification dated 10.05.2016 but despite notification and entitlement of the appellant, the appellant was not promoted against the said post constraining him to prefer writ petition, as well as departmental representation followed by the instant service appeal.

That the appellant is entitled to the benefits of the said notification by promoting him to BPS-18 with retrospective effect as per law.

Points urged need consideration, Admit, Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.4.2017 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 204 /2017

Rufaq Ahmad S/o Bashir Ul Haq
Appellant

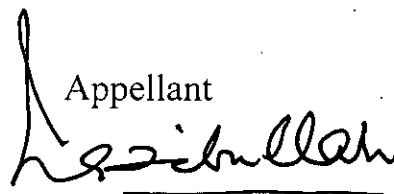
Versus

The Chief Secretary Govt. of
Khyber Pakhtunkhwa, Peshawar
and others
.....Respondents

INDEX

S. No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit			1-8
2.	Copy of Testimonials		A.	9-10
3.	Copy of Notification No. SOH-III/8-60/05 (paramedics)	10-05-2006	B.	11-16
4.	Copy of Notification No. SOH-III/8-60/05	25-08-2006	C.	17-19
5.	Departmental Appeal	14-02-2008, 15-05-2008	D.	20-22
6.	Copy of writ petition	28-03-2012	E.	23-36
7.	Wakalat Nama			

Through

Appellant


Naqeeb Ullah Khattak
Advocate

Dated: _____

BEFORE THE HONRABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

In Re S.A. 204 /2017

Diary No. 210

Duly forwarded by Peshawar High Court Peshawar on 28-03-2012

Dated 28-2-2017

1. Rufa Ahmad S/O Bashir Ul Haq, Clinical Technologist (BPS- 17), LRH Peshawar.

Appellant.

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. The Secretary Health Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. The Sectary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. The Sectary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.

Respondents.

SERVICES APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT-1974 AGAINST THE FAILURE OF THE RESPONDENTS IN NON PROMOTION OF THE APPELLANT IN THE LIGHT OF RESPONDANT NO. 2, NOTIFICATION NO. SOH-III/ 8-60/05 (PARAMEDICS) DATED 10TH MAY 2006 AND NOFICATION NO. SOH-III/8-60/05 (PARAMEDICS) DATED 25TH AUG 2006 AND THE DEPARTMENTAL APPEAL OF APPELLANT DATA 10/09/2011 IS AS YET UNACTIONED MEANING THERE BY THAT THE SAME HAS BEEN REJECTED AS A RESULT OF WHICH THE APPELLANT ALONG WITH FIVE OTHERS COLEGUES FILED WRIT PETITION NO. 182/P/2012 ON 20/01/2012 WITH PESHAWAR HIGH COURT PESHAWAR WHICH WRIT PETITION WAS SENT ON 28/03/2012 BY THE D.B HEADED BY CHIEF JUSTICE IN ORIGINAL TO THIS HONORABLE TRIBUNAL FOR DISPOSAL.

PRAYER IN SERVICE APPEAL:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THIS HONORABLE TRIBUNAL MAY BE PLEASED TO ISSUE DIRECTIONS TO THE RESPONDANTS TO IMPLIMENT THE NOTIFICATION NO. SOH-III/8-60/05 (PARAMEDICS) DATED 10TH MAY 2006 AND NOTIFICATION NO SOH-III/8-60/05 (PARAMEDICS) DATED 25TH AUG 2006 IN ITS TRUE SPIRIT AND THE APPELLANT BE PROMOTED FROM BPS-17 TO BPS-18, BPS-19 AND BPS-20 FROM THE DATE WHEN THE WRITE OF PROMOTION ACCRUDE TO HIM FROM THE DATE OF NOTIFICATION REFERRED TO ABOVE ALONG WITH ALL BACK BENEFITS OF SERVICE/PAY ETC.

RESPECTEDLY SHEWETH,

Facts giving rise to the present appeal are as under:-

1. That appellant is holding the degree of BSc Medical Technology and has served as Technologist BPS-17. The detail of his nomenclature / discipline, length of service and qualification etc are as follows:-
(Copies of testimonials are attached as Annexure-A.

S. No	Name	Date of Appointment	Total service	Experience	Qualification
1	Rufaque Ahmad S/o Bashir Ul Haq	06-03-1994	23 Years	23 Years	M.Sc Physics

2. That in pursuance of the decision taken by the Provincial Cabinet in its meeting held on 27th December, 2005, the Health Department in consultation with Finance Department Establishment Department formulated a new "Service Structure" for Paramedics serving in the Health Department and the Competent Authority Notified the same vide Notification No. SOH-III/8-60/05 (paramedics dated Peshawar, the 10th May, 2006 (Annexure-B).
3. That in the light of the Notification cited abid, the existing 57 different categories of paramedics have been restructured into 14 cadres and the post in various pay scales integrated/categorized and re-nomenclatured into 08 stages as under.

S.No	Existing Scale	Revised Scale.
1.	Posts in BPS-5 to BPS-9 in all specialties.	Junior Technicians (BPS-9)
2.	Posts in BPS-10 to BPS-12 in all specialties.	Technicians
3.	Posts in BPS-13 to BPS-14 in all specialties.	Senior Technicians
4.	Posts in BPS-15 to BPS-16 in all specialties.	Chief Technicians

5.	Post in BPS-17 in all specialties.	Technologist (BPS-17)
6.	Posts in BPS-18 in all specialties.	Senior Technologist (BPS-18)
7.	Posts in BPS-19 in all specialties.	Chief Technologist (BPS-19)
8.	Post in BPS-20 in all specialties.	Principal Technologist (BPS-20)

4. That it is pertinent to mention here that the cited "Service Structure" have been implemented to the extent of re-structuring the existing posts i.e post in BPS-5 to 9 have been re structured/categorized and re-nomenclatured as junior Technicians in BPS-9 and so on respectively.
5. That it is pertinent to mention here that 03 new vacancies for paramedics i.e. Senior Technologist (BPS-18), Chief Technologist (BPS-19) and Principal Technologist (BPS-20) have been created with endorsement and direction to the Director General Health to communicate the same to all concerned and to initiate implementation of "Service structure" completing all promotions by 30th June 2006.
6. That as per Para No.5 of the rules in the first instance, the higher posts in the re-structure 14 paramedics cadres as per annexure "C" of the Notification shall be filed in by way of promotion, as one time exercise, where-after the service Rules duly prescribed as at annexure "D" of the Notification shall be followed in subsequent promotion/initial recruitment.

7. That as per Para No.6 of the Notification, it has been laid down that promotion in the post in BPS-18 (Senior Technologist), 19 (Chief Technologist) and 20 (Principal Technologist) shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principal laid down in section 8 of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) rules, 1989.
8. That it has been laid down vide Para No. 8 and 9 that there shall be a counsel of paramedics to be notified separately and also implementation and anomaly committee.
9. That later on in supersession of the above cited Notification dated 10 May, 2006 a new and fresh Notification No. SOH-III/9-60/05 (paramedics) dated Peshawar the 25th August, 2006 (Annexure-C) have been promulgated/notified, wherein Para No.5,7,8 and Notes endorsed at the foot Note of the previous Notification have been deleted and whereas all other terms and conditions remained the same.
10. That appellant was eligible and qualified as per terms of the Notification for the post of Senior Technologist (BPS-18), Chief Technologist (BPS-19) and Principal Technologist (BPS-20) at the relevant time.

11. That respondents No.1 and 2 were under legal obligation to initiate the process of promotion as per rules within time framed or within reasonable time and promote the appellant against the above cited post as the same were not only created, sanctioned but also brought on the budget book for the 2006/7.
12. The appellant and other made hectic efforts for implementation of the true spirit of the Notified "Service Structure" by submitting representation/appeal (Annexure-D) and holding meetings with authorities setting at the helm of departmental affair, but no head has been paid to the legitimate refights of the appellant and during this course appellant was got retired without availing the benefits of the Notification. The delay tice-tac has not only adversely effected the legal service rights of the appellant, but also has held in abeyance the promotion prospectus of the lower cadres, who are waiting for promotion to the next higher stage/scale, because unless and until the appellant are not promoted to the higher pay scales and their existing vacancies are not vacated; their promotion cannot be actualized.
13. That appellant, being aggrieved of the acts and actions of Respondents appellant along with others filed writ petition No.182/212 (Annexure-E), but the same was sent this Honorable tribunal for proper adjudication under relevant rules being matter of terms and condition, therefore, the instant service appeal inter-alia on the following ground:-

Grounds:

- A. The Respondents have not treated petitioner in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully deprived the appellant from his legitimate right of promotion as per service structure rules, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That every civil servant has legitimate right of rising up in go Government hierarchy by means of promotion. Appellant have rendered more than 20 years services on existing post of Technologist (BPS-17) without promotion and when after hectic efforts fresh rules in the form of "Service Structure" were notified; even than the same have not been actualized and appellant and others have been deprived of its benefits till the date. The same is not only unlawful, unfair and against the spirit of equity and justice but also unwarranted and highly undesirable.
- C. That respondents were under legal obligation to constitute counsel for paramedics, Implementation and anomaly committee so as enable the aggrieved paramedics to invoke their jurisdiction for the Redressel of their agonies. The same has not been constituted for malafide reasons in order to deprive the appellant and others from claiming their legitimate rights.....
- D. That appellant along with others made hectic efforts for implementation of the true spirit of the

Notified "Service Structure" by submitting representation/appeal (Annexure-D) followed by holding meetings with authorities setting at the helm of departmental affair, but no head has been paid to the legitimate rights of the appellant. The delay tic-tac has not only adversely effected the legal service rights of the appellant, but also has held in abeyance the promotion prospectus of the lower cadres, who are waiting for promotion to the next higher stage/scale, because unless and until the appellant are/were not promoted to the higher pay scales and their existing vacancies are not vacated; their promotion cannot be actualized.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this Service Appeal, this Hon'ble Tribunal may graciously be pleased direct the respondents to take exercise and implement the true spirit of Notification No. SOH-III/8-60/05 (paramedics) dated, the 10th May, 2006 and promote the appellant, when right of promotion have been accrued in his favour i.e. w.e from the date of Notification as per law and rules.

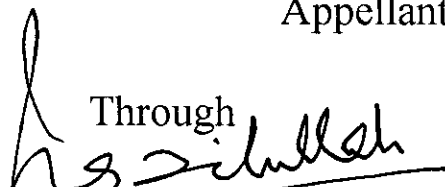
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Respondents to take exercise and implement the true spirit of notification No. SOH-III/8-60/05 (Paramedics) dated: the 10th May 2006 and promote the appellant, when right of promotion has been accrued in his favour i.e w.e from the date of Notification as per law and rules.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.



Appellant

Through

Naqib Ullah Khattak
Advocate, Peshawar

Dated: ___/___/___

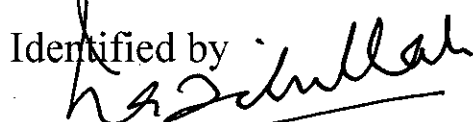
Affidavit

I Rufaue Ahmad Clinical Technologist BPS-17 do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

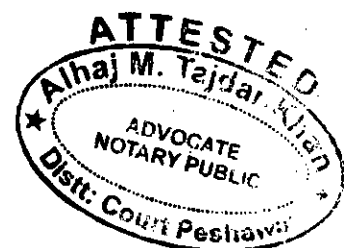


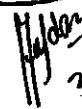
Deponent

Identified by



Naqib Ullah Khattak
Advocate Peshawar.




25/2/2017

University of Peshawar

(Pakistan)

Session ANNUAL - 1990

and a student having passed the prescribed examination at the University of Peshawar in

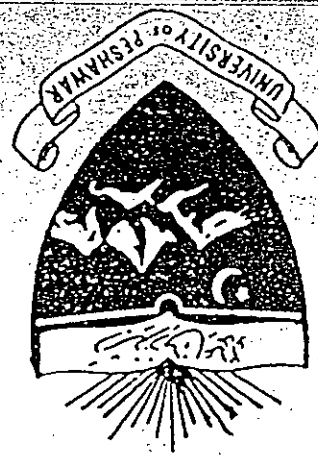
to the Degree of

Master of Science

in the FIRST Class

PHYSICS

The subject of examination being The examination was taken as a whole / report



DR. MASUD KHAN
SOCIETY OF PESHAWAR
LADY PESHAWAR

Allister

Registrar

Countersigned

Vice-Chancellor
for Bal

Serial No 001655
Registered No. 84 - M - 6797
Enroll No. 191
15TH AUGUST, 1991

Attested
AGG. Registrar
P.S.R.

Attested
To be true copy
Advocate

Annex

9



in association with
The Royal National Throat, Nose and Ear Hospital
Gray's Inn Road, London WC1X 8EE



This is to certify that

Rufaq Ahmad

has been awarded the :

Certificate of Training in Audiology with

January - February 2005

David McAlpin

Course Tutor

Allishah
DR. QAZI YUAN
MBBS, DLO, 1993
Senior Medical Officer ENT
Lady Reading Hospital, Peasmarsh

Attested
To be true copy
Advocate

*Attested to be true copy
Advocate*

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Annex-B

**GOVERNMENT OF NWFP
HEALTH DEPARTMENT**

Dated Peshawar the 10th May, 2006

NOTIFICATION

NO:SOH-III/8-60/05(Paramedics). In pursuance of the decision taken by the provincial cabinet in its meeting held on 27th December 2005, the Competent Authority is pleased to approve eight stage paramedics services structure of NWFP with effect from 27-12-2005. The salient features whereof shall be as under:-

1. The exiting 57 different categories of paramedics as mentioned in annexure A to this notification are restructured into 14 cadres as per annexure B.
2. In all the aforesaid cadres/specialties, the posts in various pay scales shall be integrated/categorized and re-nomenclatured as under:-

S.No	Existing Posts	Re-structured posts
I)	Posts in BPS-5 to BPS-9 in all specialties.	Junior Technicians (BPS-9)
II)	Posts in BPS-10 to BPS-12 in all specialties.	Technicians (BPS-12)
III)	Posts in BPS-13 to BPS-14 in all specialties.	Senior Technicians (BPS-14)
IV)	Posts in BPS-15 to BPS-16 in all specialties.	Chief Technician (BPS-16)
V)	Post in BPS-17 in all specialties.	Technologist (BPS-17)
VI)	Posts in BPS-18 in all specialties.	Senior Technologist (BPS-18)
VII)	Posts in BPS-19 in all specialties.	Chief Technologist (BPS-19)
VIII)	Post in BPS-20 in all specialties.	Principal Technologists (BPS-20)

The words "clinical" shall be mentioned with the categories of posts meant for paramedics working in the hospitals and "Primary Health Care" with the paramedics working in the field along with mention of specific specialty (e.g. Junior Clinical Technician (Radiology) and Junior Primary health Care Technician (Multi-purpose).

3. The number of Posts in BPS-20, BPS-19, BPS-18, BPS-17, BPS-16, BPS-14, BPS-12, and BPS-9 shall be according to the proportionate ratio based on the total 8965 posts as mentioned in the provincial budget book for financial year 2005-2006. The proportionate ratio of 8 stage formula shall be as under:-

Aliana
[Signature]

BPS	%	No. of posts
Post in BPS-9	80%	7172
Post in BPS-12	12%	1076
Post in BPS-14	3.5%	314
Post in BPS-16	2.5%	224
Post in BPS-17	1.86%	167
Post in BPS-18	0.09%	8
Post in BPS-19	0.04%	3
Post in BPS-20	0.01%	1

However additional posts shall be created for any of the left over personals of paramedics cadre (if any). Moreover, subsequent creation of posts in any of the 14 paramedics cadres in any scale shall also be included in the aforesaid proportionate ratio of posts in the 8 tiers formula. The proportionate ratios of posts in BPS-12 and above shall be modified accordingly as and when new creation of posts are made in BPS-9 in each of the 14 cadres subsequently.

4. Seniority of the incumbents of the posts in the 14 cadres so merged shall be caused on the basis of scale wise seniority as well as date of regular appointment in the pay scale. (e.g. in joint seniority list of BPS-12, the official already in BPS-12 will be placed on the top of the list and the officials in the lower pay scale shall be accordingly placed step by step in the list, invariably keeping intact the inter-se-seniority of the incumbents in the same pay scale).
5. In the first instance, the higher posts in the re-structured 14 paramedics cadres as per annexure "C" shall be filled in by way of promotion, as one time exercise, where-after the service rules duly prescribed as at annexure D shall be followed in subsequent promotion/initial recruitment.
6. Promotions in the post in BPS-18, 19 and BPS-20 shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principles laid down in section 8 of the NWFP civil servants (ACT), 1973 read with Rule-17 of the NWFP civil servants (appointment, promotion and transfer) rules, 1989.
7. The afore-said paramedics service structure into 14 cadres shall also be applicable mutatis-mutandis to the paramedics working in FATA and employees working in Districts, all autonomous, semi-autonomous and corporate bodies.
8. There shall be a council of paramedics to notified separately.
9. The approved implementation committee and anomaly committee shall also be notified separately.
10. This eight stage paramedics service structure will replace all existing categories, cadres, structures and nomenclatures and will cancel all such cadres/ categories rules and regulations etc which are in contravention to the approved paramedics services structure. New posts in all type of Health Delivery System will be created in future in accordance

M. K. Shah
Chairman

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with the frame work of this service structure. Any new specialties will be added in the frame work of approved paramedics service structure.

Sd/xxx
(ADBUS SAMAD KHAN)
SECRETARY HEALTH

Endorsement No. & date as above.

Copy forwarded to the:-

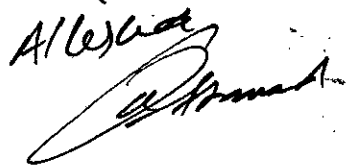
1. Secretary to Governor, NWFP.
2. Secretary to Chief Minister, NWFP.
3. Secretary (FATA) Governor's Sectt (FATA), Peshawar.
4. Secretary to Govt of NWFP; Finance Deptt: with the request to notify all the post duly re-structured and renamed accordingly so that the same may be included in the budget book 2006-17.
5. All Administrative Secretaries to Govt. of NWFP.
6. Accountant General, NWFP.
7. Director General, Health Services, NWFP with direction to communicate to all concerned and initiate implementation of service structure completing all promotions by 30th June 2006.
8. Inspector General of Prisons, NWFP.
9. Director General Social Security, NWFP.
10. Director, PHSA, NWFP.
11. Dr. Mahmood Alam, Chairman, Paramedics Service Structure Committee, PHSA, NWFP.
12. The Chief HSRU for information with the direction to ensure implementation of service structure in future ADP and regular program.
13. The Chief Planning Officer Health Department for information with the direction to ensure implementation of service structure in future ADP and regular program.
14. Director Health Services (FATA), Peshawar.
15. All Chief Executives in teaching Hospitals in NWFP.
16. All Medical Superintendents in DHQ Hospital in NWFP.
17. All Executive District Officer (Health) in NWFP.
18. Director of Information, NWFP.
19. All Agency Surgeons in FATA.
20. Principal KMC/KCD, Peshawar.
21. Dean, P.G.M.I, Peshawar.
22. All District Accounts Officer in NWFP.
23. All Agency Accounts Officer FATA.
24. Ps to Chief Secretary, NWFP.
25. PS to Minister for Health, NWFP.
26. President, Provincial paramedical Association, NWFP, Peshawar.
27. The Manager Govt. Printing Press, NWFP.

Alamzeb Malik
[Signature]

(Alamzeb Malik)
Section Officer Health -III

SUMMARY OF EXISTING POSTS IN EACH CADRE OF PARAMEDICS

S. No	BPS	9	12	14	16	17	18	19	20	Total
		(5-9)	10-12)	(13-14)	(15-16)	-	-	-	-	
1.	Dental Technician	172	2	-	9	-	-	-	-	183
2.	Pharmacy Technician	1741	8	-	18	-	-	-	-	1767
3.	Radiology Technician	358	-	-	12	1	-	-	-	371
4.	Pathology Technician	795	10	-	29	7	-	-	-	841
5.	Anesthesia Technician	268	-	-	17	-	-	-	-	285
6.	Cardiology Technician	117	7	-	6	1	-	-	-	131
7.	Surgical Technician	369	-	-	16	-	-	-	-	385
8.	Dialysis Technician	8	11	-	1	-	-	-	-	20
9.	Physiotherapy Technician	38	-	-	-	-	-	-	-	38
10.	PHC (Multi-purpose)	3767	160	18	19	1	-	-	-	3962
11.	PHC-(MCH)	940	34	-	15	-	-	-	-	989
12.	Oph/otorh Technician	18	5	-	8	6	-	-	-	37
13.	Podiatry Technician	21	-	-	-	-	-	-	-	21
14.	Gastroenterology Technician	2	-	-	-	-	-	-	-	2
	Grant Total	8641	237	18	150	16	-	-	-	9035
	Proportionate share	7228	1084	316	226	168	8	4	1	9035
	Existence Incumbents	8614	237	18	150	16	-	-	-	9035



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Annexure "C"

Distribution of Proposed Post Among 14 Cadres

s.no	BPS	09	12	14	16	17	18	19	20	Total
1.	Dental Technician	141	23	6	9	3	0	01	0	183
2.	Pharmacy Technician	1417	228	58	36	27	01	0	0	1767
3.	Radiology Technician	293	46	13	11	07	01	0	0	371
4.	Pathology Technician	676	100	24	25	15	01	0	0	841
5.	Anesthesia Technician	214	34	10	20	06	0	01	0	285
6.	Cardiology Technician	100	17	05	05	04	0	01	0	132
7.	Surgical Technician	311	44	13	10	08	01	0	0	337
8.	Dialysis Technician	04	07	03	03	02	01	0	0	20
9.	Physiotherapy/Psychotherapy Technician	14	11	04	04	04	0	01	0	38
10.	Primary Health Care (Multi-purpose)	3245	449	131	71	64	01	0	01	3962
11.	Primary health Care (MCH)	798	116	37	19	18	01	0	0	989
12.	Ophthalmic/Outrhinology Technician	06	04	08	10	08	01	0	0	37
13.	Pulmonology Technician	09	04	04	02	02	0	0	0	21
14.	Gastroenterology Technician	0	01	0	01	0	0	0	0	2
Grand Total		7228	1084	316	226	168	08	04	01	9035

ATC/led



EIGHT STAGE PARAMEDICS SERVICE STRUCTURE OF N.W.F.P

Distribution in Groups.

S. NO	PRIMARY HEALTH CARE GROUP	BPS & NO OF POSTS	CLINICAL GROUP
1.	PRINCIPAL PRIMARY HEALTH CARE TECHNOLOGIST BPS-20 & 100% BY PROMOTION-7 YEARS IN BPS-19	BPS-20 01	PRINCIPAL CLINICAL TECHNOLOGIST BPS-20 & 100% BY PROMOTION-7 YEARS IN BPS-19
2.	CHIEF PRIMARY HEALTH CARE TECHNOLOGIST BPS-19 & 100% BY PROMOTION 7 YEARS IN BPS-18	BPS-19 8	CHIEF CLINICAL TECHNOLOGIST BPS-19 & 100% BY PROMOTION-7 YEARS IN BPS-18
3.	SENIOR PRIMARY HEALTH CARE TECHNOLOGIST BPS-18 & 50% BY PROMOTION-7 YEARS IN BPS-17 & 50% BY INITIAL RECRUITMENT MASTER IN SPECIALTY TECHNOLOGIST	BPS-18 08	SENIOR CLINICAL TECHNOLOGIST BPS-18 & 50% BY PROMOTION-7 IN BPS-17 & 50% BY INITIAL RECRUITMENT MASTER IN SPECIALTY
4.	PRIMARY HEALTH CARE TECHNOLOGIST BPS17 & 50% BY PROMOTION-5 YEARS IN BPS 16 & 50% BY INITIAL RECRUITMENT BACHELOR IN SPECIALTY TECHNOLOGIST.	BPS-17 167	CLINICAL TECHNOLOGIST BPS-17 & 50% BY PROMOTION-5 YEARS IN BPS-16 & 50% BY INITIAL RECRUITMENT BACHELOR IN SPECIALTY.
5.	CHIEF PRIMARY HEALTH CARE TECHNICIAN BPS-16 100% BY PROMOTION 4 YEARS IN BPS-14 & 4WEEKS MANAGEMENT TRAINING	BPS-16 224	CHIEF CLINICAL TECHNICIAN BPS-16 100% BY PROMOTION -4 YEARS IN BPS-12 & 12 WEEKS REFRESHER.
6.	SENIOR PRIMARY HEALTH CARE TECHNICIAN BPS -14 & 100% BY PROMOTION-4 YEARS IN BPS-12 & 12 WEEKS REFRESHER	BPS-14 314	SENIOR CLINICAL TECHNICIAN BPS-14 & 100% BY PROMOTION -4 YEARS IN BPS-12 & 12 WEEKS REFRESHER
7.	PRIMARY HEALTH CARE TECHNICIAN BPS-12 & 50% BY PROMOTION -5 YEARS IN BPS -9 & 50% BY INITIAL RECRUITMENT DIPLOMA IN SPECIALTY	BPS-12 1076	CLINICAL TECHNICIAN BPS-12 & 50% BY PROMOTION -5 YEARS IN BPS -9 & 50% BY INITIAL RECRUITMENT DIPLOMA IN SPECIALTY
8.	JUNIOR PRIMARY HEALTH CARE TECHNICIAN BPS-9 & 100 % BY INITIAL RECRUITMENT CERTIFICATE IN SPECIALTY FROM MEDICAL FACULTY /RECOGNIZED INSTITUTION	BPS-9 7172	JUNIOR CLINICAL TECHNICIAN BPS-9 & 100% BY INITIAL RECRUITMENT & CERTIFICATE IN SPECIALTY FROM MEDICAL FACULTY/RECOGNIZED INSTITUTION
	TOTAL	8965	

---PHC including multi-purpose and MCH

---Clinical Includes Dental, Radiology, Pulmonology, Physiotherapy, Ophthalmology/Otorhinology, Pharmacy Pathology Anesthesia Cardiology Surgical Dialysis and Gastroenterology.

BPS-18-19 & 20 will only be given to persons holding higher education like bachelor degree or master degree in specialty cum seniority from join seniority list of 18, 19 and 20 after initial up gradation up-to 17.

--BSc. Honours (4 years) will be equal to Master degree.

A. K. S.
[Signature]

Better copy

17

Annex-C

**GOVERNMENT OF NWFP
HEALTH DEPARTMENT**

Dated Peshawar the 25th August, 2006

NOTIFICATION

NO.S-II-III/8-60/05 (Paramedics): In supersession of this Department's Notification of even number dated 10th May, 2006 and in pursuance of the decision taken by the Provincial Cabinet, in its meeting held on 27th December, 2005 the Competent Authority is pleased to approve eight stages Paramedics Service Structure of NWFP as follows:

1. The exiting 57 different categories of Paramedics at annexure A, to are restructured into 14 cadres as per annexure B.
2. In all the aforesaid cadres/specialties, the posts in various pay scales shall be integrated/categorized and re-designated as under:-

S.No	Existing Posts	Re-structured posts
I)	Posts in BPS-5 to BPS-9 in all specialties.	Junior Technicians (BPS-9)
II)	Posts in BPS-10 to BPS-12 in all specialties.	Technicians (BPS-12)
III)	Posts in BPS-13 to BPS-14 in all specialties.	Senior Technicians (BPS-14)
IV)	Posts in BPS-15 to BPS-16 in all specialties.	Chief Technician (BPS-16)
V)	Post in BPS-17 in all specialties.	Technologist (BPS-17)
VI)	Posts in BPS-18 in all specialties.	Senior Technologist (BPS-18)
VII)	Posts in BPS-19 in all specialties.	Chief Technologist (BPS-19)
VIII)	Post in BPS-20 in all specialties.	Principal Technologists (BPS-20)

The words "clinical" shall be mentioned with the categories of posts meant for paramedics working in the hospitals and "Primary Health Care" with the paramedics working in the field along with mention of specific specialty (e.g. Junior Clinical Technician (Radiology) and Junior Primary health Care Technician (Multi-purpose).

3. The number of Posts in BPS-9, BPS-12, BPS-14, BPS-16, BPS-17, BPS-18, BPS-19, and BPS-20 in the service shall be worked out according to the following proportionate ratio.

S No	BPS	Percentage
1)	Post in BPS-9	80%
2)	Post in BPS-12	12%
3)	Post in BPS-14	3.5%
4)	Post in BPS-16	2.5%
5)	Post in BPS-17	1.86%
6)	Post in BPS-18	0.09%

7)	Post in BPS-19	0.04%
8)	Post in BPS-20	0.01%

4. Seniority of the incumbents of the posts in the 14 cadres so merged shall be caused on the basis of scale wise seniority as well as date of regular appointment in the pay scale. (e.g. in joint seniority list of BPS-12, the official already in BPS-12 will be senior and the official in the lower pay scale shall be accordingly placed step by step in the list, invariably keeping intact the inter-se-seniority of the incumbents in the same pay scale).
5. Promotions to the post in BPS-18, 19 and BPS-20 shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principles laid down in section 8 of the NWFP Civil Servants ACT, 1973 and Rule-17 of the NWFP Civil Servants (appointment, promotion and transfer) rules, 1989.
6. The eight stage paramedics service structure will replace all existing categories cadre structures and nomenclatures and will cancel all such cadres/categories rules and regulations etc. which are in contravention to the approved Paramedics Service Structure.
7. The following four cadres declared as dying cadre by the Provincial Cabinet vide its decision dated 22-06-2000 will be replaced with the following new cadres.

<u>Existing Nomenclature</u>	<u>New Nomenclature</u>
Dispenser/Compounders/Dresser	Pharmacy Technician
Malaria Technician	Primary Health Care (Multipurpose)
EPI Technician	-do-
Sanitation Technician	-do-

- a) The Health Department should devise job description and distribution plan of the above four cadres.
- b) The post so vacated by the incumbent of the above four cadres will be filed in after its fresh approval from Finance Department.

Sd/xxx

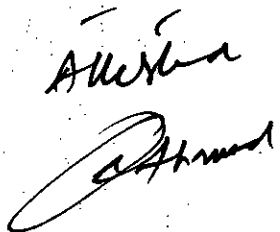
(ADBUS SAMAD KHAN)
SECRETARY HEALTH

Dated Peshawar 25-08-2006

Endorsement No. KC/FD/SO(FR)/7-3/2001.

Copy forwarded for information and necessary action to

1. Accountant General, NWFP Peshawar.
2. All District/Agency Accounts Officer in NWFP.


(RAFIQ AKBAR)
Section officer (FR)

Endorsement No. & date as above.

Copy forwarded to

1. The Additional Chief Secretary (FATA) Civil Secretariat FATA Peshawar.
2. The Secretary to Governor NWFP.
3. The Secretary to Chief Minister NWFP.
4. The Secretary to FATA Governor's Secretariat (Peshawar).
5. The Secretary to Government of NWFP Finance Department for information.
6. All Administrative Secretaries to Govt. of NWFP.
7. The Accountant General NWFP Peshawar.
8. The Director General, Health Services, NWFP.
9. The Inspector General of Prisons, NWFP.
10. The Director General Social Security, NWFP.
11. The Director, PHSA, NWFP.
12. Dr. Mahmood Alam, Chairman, Paramedics Service Structure Committee, PHSA, NWFP.
13. The Chief HSRRU.
14. The Chief Planning Officer Health Department.
15. Director Health Services FATA, (Peshawar) to ensure reflection of the up-gradation/re-designation of posts in the budget book 2007-08.
16. All Chief Executives of Teaching Hospitals in NWFP.
17. All Medical Superintendents in DHQ Hospital in NWFP.
18. All Executive District Officer (Health) in NWFP.
19. The Director of Information, NWFP.
20. All Agency Surgeons/MS of FATA.
21. The Principal KMC/KCD, Peshawar, AMC Abbottabad Saidu Medical College Swat and Gomal Medical College DI Khan.
22. The Dean, P.G.M.I, Peshawar.
23. All District Accountant Officer in NWFP.
24. All Agency Accounts Officer in FATA.
25. The Budget Officer-V Finance Department to ensure reflection of the up-gradation/re-designation of posts in the budget book 2007-8.
26. The Section officer (Budget), Health Department.
27. PS to Chief Secretary, NWFP.
28. PS to Secretary Establishment, E&A Department NWFP.
29. PS to Minister for Health, NWFP.
30. President, Provincial paramedical Association, NWFP, Peshawar.
31. The Manager Govt. Printing Press, NWFP.

Atul
Atul

(Alamzeb Malik)
Section Officer Health -III

Annex-D

To
The Secretary
Government of Khyber Pakhtunkhwa
Health Department Peshawar

THROUGH PROPER CHANNEL.

SUBJECT: APPEAL FOR PROMOTION TO BPS-18

Respected Sir,

With due respect, we have the honour to submit the following few lines for your sympathetic consideration please that:

- o The Health Department has been approved eight stages paramedics service structure vide notification number SOH-III/8-60/05 (Paramedics) dated August 25, 2006.
- o We, the following x Technologists, belonging to different cadres have been serving in BPS-17 prior to the approval of the eight stages paramedics service structure:
 1. Mr. Jahanzeb (Pathology)
 2. Ms. Najma Perveen (Pathology)
 3. Mr. Abdul Manaf (Pathology)
 4. Mr. Rifaq Ahmad (Ophth/Orch)
 5. Mr. Mufariq Shah (Ophth/Orch)
 6. Mr. Mullah Muhammad (PHC MP) Leprosy
- o According to the service structure rules, vide notification number SOH-III/8-60/05 dated June 7, 2008, (copy attached) only five years service in BPS-17 is required. promotion to BPS-18, while we all (the above mentioned Technologists) have been serving in BPS-17 for more than 13 years and are eligible for promotion to BPS-18 from the day one since the inception of eight stages paramedics service structure vide notification number SOH-III/8-60/05 (Paramedics) dated August 25, 2006.
- o In the eight stages service structure, there are nine posts lying vacant in BPS-18, four in BPS-19 and one in BPS-20. Paramedics belonging to different cadres in the lower scales, from BPS-6 to BPS-16, have already been promoted according to the service structure approved in 2006.

Attested

To be true copy
Advocate

21



It is therefore, requested that being the senior most we may kindly be promoted on the vacant posts in BPS-18. Further more, our promotion should be considered from day one since the approval of the new service structure.

Thanking you.



Yours Obediently,

Mr. Jahanzeb (Pathology)

Ms. Najma Parveen (Pathology)

Mr. Abdul Manaf (Pathology)

Mr. Rifaq Ahmad (Ophth/Orch)

Mr. Mufariq Shah (Ophth/Orch)

Mr. Mullah Muhammad (PHC MP) Leprosy

Jahanzeb

Najma

Abdul Manaf

10/9/2011

Rifaq Ahmad

Mufariq Shah

10/9/2011

C.c.

Director General Health Services, Ferozpur Pakhtunkhwa for information and necessary action please.

Attested
To be true copy
Advocate

Attested
Asad

Attested
Asad

To

The Chief Secretary, Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: Departmental appeal/Representation

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That the Health department has approved eight stages paramedics service structure vide Notification numbers SOH-III/8-60/05 (Paramedics) dated May 10th 2006.
2. That I have served in BPS-17 for long year before the approval of eight stages Paramedics Service Structure.
3. That right has been accrued in my favour for the post of Senior Technologist (BPS-18) and further promotion on account of my qualification and length of service.
4. That 08 post are laying vacant in BPS-18, 19 and 20 and appellant are eligible and qualified to be posted and promoted against the said post as per Service Structure Rules.
5. That Paramedics belong to different cadre have benefited from the benefits as per Service Structure Rules.

It is, therefore, humbly requested that on acceptance of this departmental appeal, Your Honour may graciously be pleased to promote/benefited the applicant/appellant from the benefits of the Service Structure Rules dated 10th May, 2006.

Yours faithfully

Rufaq Ahmad S/o Bashirul Haq
Medical Technologist (BPS-
17), L R H, Peshawar.

Attested

Attested
To be true copy
Advocate

Dated: 10 / 12 / 2011

23 Annex-6
IN THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION No. 182 /2012 ^P



1. Muhammad Farid Khan Khattak S/o Atsim Khan R/o Phase No.6, Sector F/5, Street No.6, House No.373, Hayatabad, Peshawar.
2. Jahanzeb S/o Fazal Wadoochi, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.
3. Abdul Munaf S/o Safi Ullah, Medical Technologist (BPS-17), L R H, Peshawar.
4. Rifaq Ahmad S/o Bashirul Haq Medical Technologist (BPS-17), L R H, Peshawar.
5. Mufariq Shan S/o Wahid Gul, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.
6. Awal Badshah S/o Sharbat Khan, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.Petitioners.

15
652/12
Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Health Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary, Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
.....Respondents

ATTESTED

EXAMINER
Peshawar High Court

21/10/2012

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7

**WRIT PETITION UNDER ARTICLE, 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC
OF PAKISTAN, 1973.**

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:

1. That Petitioners are holding the degree of B.Sc and M.Sc Medical Technology in different discipline and has been serving as Technologist (BPS-17). The details of their nomenclature/discipline, length of service and qualification etc are as follows:- (Copies of testimonials are attached as Annexure-A to A5 and Copy of Seniority list as Annexure-B)

S.No	Name	Date of Appointment	Total service	Experience	Qualification
1	M. Farid Khan S/o	26-06-1978	30 years	30 years	B.Sc MED: TECHNOLOGY
2	Jahanzeb S/o Fazal Wadood	17-05-1979	33 years	33 years	B.Sc MED: TECHNOLOGY
3	Abdul Munaf S/o Safi Uilah	01-08-1987	24 years	24 years	B.Sc MED: TECHNOLOGY
	Rufaq Ahmad S/o Bashir ul Haq	06-03-1994	18 years	18 years	M.Sc (Physics)
4	Mufariq Shah S/o Wahid	19-09-1995	17 years	17 years	M.Sc (Physics)

APPROVED
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Date:



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5	Awal Badshah S/o Sharbat Khan	27-07-1988	24 years	24 years	M.Sc TECH B.Sc TECHNOLOGY	MED: And MED: TECHNOLOGY

2. That in pursuance of the decision taken by the Provincial cabinet in its meeting held on 27th December, 2005, the Health Department in consultation with Finance Department and Establishment Department formulated a new "Service Structure" for Paramedies serving in the Health Department and the competent authority Notified the same vide Notification No. SOH-III /8-60/05 (paramedies) dated Peshawar, the 10th May, 2006 (Annexure-C).

3. That in the light of the Notification cited abid, the existing 57 different categories of paramedies have been restructured into 14 cadres and the post in various pay scales integrated/categorized and re-nomenclatured into 08 stages as under:-

Sr.No.	Existing Post	Re-Structured Posts
1.	Post in BPS-5 to BPS-9 in all specialities.	Junior Technicians (BPS-9)
2.	Post in BPS-10 to BPS-12 in all specialities.	Technicians (BPS-12)
3.	Post in BPS-13 to BPS-14 in all specialities.	Senior Technicians (BPS-14)
4.	Post in BPS-15 to	Chief Technicians (BPS-

ATTESTED
EXAMINER
Peshawar High Court.

01 DEC 2015

	BPS-16 in all specialities.	16)
5.	Post in BPS-17 in all specialities.	Technologist (BPS-17)
6.	Post in BPS-18 in all specialities.	Senior Technologist (BPS-18)
7.	Post in BPS-19 in all specialities.	Chief Technologist (BPS-19)
8.	Post in BPS-20 in all specialities.	Principal Technologist (BPS-20)

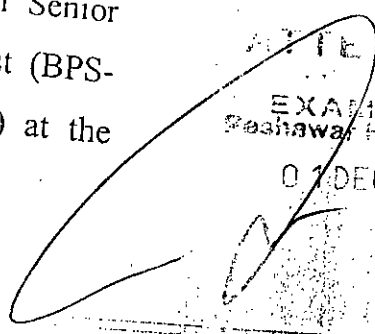
4. That it is pertinent to mention here that the cited "Service Structure" have been implemented to extent of re-structuring the existing posts i.e post in BPS-5 to BPS-9 have been re-structured/categorized and re-nomenclatured as Junior Technicians in BPS-9 and so on respectively.
5. That it is pertinent to mention here that 03 new vacancies for paramedics i.e Senior Technologist (BPS-18), Chief Technologist (BPS-19) and Principal Technologist(BPS-20) have been created with endorsement and direction to the Director General Health to communicate the same to all concerned and to initiate implementation of "Service Structure" completing all promotions by 30th June 2006.
6. That as per Para No.5 of the Rules in the first instance, the Higher posts in the re-structure 14 paramedics cadres as per annexure "C" of the Notification shall be filed in by way of promotion as one time exercise, where-after the service Rules duly prescribed as at annexure "D" of the Notification shall be followed in subsequent

APPROVED
 Y. S. S. S. S.
 10/07/2015

promotion/initial recruitment.

- 7. That as per Para No.6 of the Notification, it has been laid down that promotion in the post in BPS-18 (Senior Technologist), 19 (Chief Technologist) and 20 (Principal Technologist) shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principle laid down in section 8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) rules, 1989.
- 8. That it has been laid down vide Para No.8 and 9 that there shall be a counsel of paramedics to be notified separately and also implementation and anomaly committee.
- 9. That later on in supersession of the above cited Notification dated 10 May, 2006 a new and fresh Notification No: SOH-III/8-60/05 (paramedics) dated Peshawar the 25th August, 2006 (Annexure-D) have been promulgated/notified, wherein Para No.5,7,8 and Notes endorsed at the Foot Note of the previous Notification have been deleted and whereas all other terms and conditions remained the same.
- 10. That petitioner were eligible and qualified as per terms of the Notification for the post of Senior Technologist(BPS-18), Chief Technologist (BPS-19) and Principal Technologist (BPS-20) at the

ATTESTED
 EXAMINER
 Peshawar High Court
 07 DEC 2015



relevant time.

11. That respondents No.1 and 2 were under legal obligation to initiate the process of promotion as per rules within time framed or within reasonable time and promote the petitioners against the above cited post as the same were not only created, sanctioned but also brought on the budget book for the 2006/07.


12. That petitioners made hectic efforts for implementation of the true spirit of the Notified "Service Structure" by submitting representations (Annexure-E) and holding meetings with authorities setting at the helm of departmental affair, but no head has been paid to the legitimate rights of the petitioners and during this course petitioner No.1 got retired without availing the benefits of the Notification and petitioner No.2 is going to be retired with effect from February, 2012. The delay tic-tac has not only adversely effected the legal service rights of the petitioners, but also has held in abeyance the promotion prospectus of the lower cadres, who are waiting for promotion to the next higher stage/scale, because unless and until the petitioners are not promoted to the higher pay scales and their existing vacancies are vacated; their promotion cannot be actualized.

13. That petitioner, being aggrieved of the acts and actions of Respondents and having no other adequate and efficacious remedy, files this

APES
2012
OF

Grounds:

- A. That Respondents have not treated petitioner in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully deprived the petitioner from their legitimate right of promotion as per service structure rules, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That every civil servant has legitimate right of rising up in Government hierarchy by means of promotion. Petitioners have rendered more than 20 years service on existing post of Technologist(BFS-17) without promotion and when after hectic efforts fresh Rules in the form of "Service Structure" were notified; even then the same have not been actualized and petitioners have been deprived of its benefits till the date and during this course petitioner No.1 retired and petitioner No.2 is going to be retired with effect from February, 2012, the same is not only unlawful, unfair and against the spirit of equity and justice but also unwarranted and highly undesirable.
- C. That respondents were under legal obligation to constitute counsel for paramedics, Implementation and anomaly committee so as enable the aggrieved



paramedics to invoke their jurisdiction for the redressal of their agonies. The same has not been constituted for malafide reasons in order to deprive the petitioners from claiming their legitimate rights.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to direct the respondents to take exercise and implement the true spirit of the Notification No. SOH-III/8-60/05(paramedics) dated, the 10th May, 2006 and promote the petitioners, when right of promotion have been accrued in their favour i.e w.e.from the date of Notification as per law and rules.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

Through

Petitioners

Ashraf Ali Khattak
Ashraf Ali Khattak
Advocate, Peshawar.


Dated: _____ / 01/2012

Attested
Hazibullah
Advocate Peshawar

ATTESTED
EXAMINER
Peshawar High Court
01 DEC 2015

CERTIFICATE

Certified on instruction that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 regarding present matter.



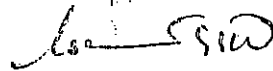
Ashraf Ali Khattak
Advocate, Peshawar.

List of Books

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Services Law.

Note

1. Three spare copies of the Writ Petition are enclosed in a separate file cover.
2. Memo of addresses is also attached.



Ashraf Ali Khattak
Advocate, Peshawar

Attested
M. S. Iqbal
Advocate Peshawar

ATTESTED
EXAMINER
Peshawar High Court
04 DEC 20

IN THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION No. 182 /2012 ^P

7. Muhammad Farid Khan Khattak S/o Atsim Khan R/o Phase No.6, Sector F/5, Street No.6, House No.373, Hayatabad, Peshawar and others.....Petitioners

Versus

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

Affidavit

I, Ashraf Ali Khattak Advocate on behalf of and as per instructions of my client, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Ashraf Ali Khattak

Deponent

*Attested
Fazailullah
Advocate
Peshawar*

No. 6178
Certified that the above was verified on solemnly affirmation before me in office, this..... 20th
day of... July..... 2005..... Ashraf Ali Khattak A9
at..... Peshawar.....
who was identified by..... self.....
Who is personally known to me:
<i>Ashraf Ali Khattak</i> Oath Commissioner Peshawar High Court, Peshawar.

[Large handwritten signature]

IN THE PESHAWAR HIGH COURT PESHAWAR.

WRIT PETITION No. 182^P/2012

Muhammad Farid Khan Khattak S/o Atsim Khan R/o
Phase No.6, Sector F/5, Street No.6, House No.373,
Hayatabad, Peshawar and others.....Petitioners

Versus

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

Addresses of Parties.

1. Muhammad Farid Khan Khattak S/o Atsim Khan R/o Phase No.6, Sector F/5, Street No.6, House No.373, Hayatabad, Peshawar.
2. Jahanzeb S/o Fazal Wadood, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.
3. Abdul Munaf S/o Safi Ullah, Medical Technologist (BPS-17), L R H, Peshawar.
4. Ruffaq Ahmad S/o Bashirul Haq Medical Technologist (BPS-17), L R H, Peshawar.
5. Mufariq Shah, S/o Wahid Gul, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.
6. Awal Badshah S/o Sharbat Khan, Medical Technologist (BPS-17), Hayatabad Medical Complex, Peshawar.Petitioners

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.

- 2. The Secretary Health Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 - 3. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 - 4. The Secretary, Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
-Respondents.

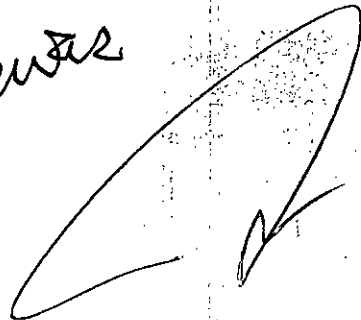
Petitioners

Through

Ashraf Ali Khattak
 Ashraf Ali Khattak
 Advocate, Peshawar.

Dated: 2nd / 01 / 2012

Attested
Masihullah
 Advocate Peshawar



35 61

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of Judge
28.3.2012.	<p style="text-align: center;"><u>W.P. 182-P of 2012.</u></p> <p>Present: Mr. Ashraf Ali Khattak, advocate for petitioners.</p> <p style="text-align: center;">-----</p> <p><u>DOST MUHAMMAD KHAN, C.J.-</u> Contends that in view of the Notification issued by the Establishment Department dated 10.5.2006 bearing No. SOH-III/8-60/05, the service of the Paramedics was restructured and majority of the posts were re-designated changing their nomenclatures along with grade and pay scale and the petitioners being fully eligible and also fulfilled the criteria laid down under the Notification but they are not given their due right despite several Representation made and the last in the series was submitted in September, 2011 but neither the same have been decided nor any result has been intimated to the petitioners.</p> <p>2. As the petitioners are not employees of the Autonomous Body but of the Health Department, hence are Government Servants, therefore, under Article 212 of the Constitution, this court cannot</p>



ATTESTED
EXAMINER
Peshawar High Court.
01 DEC 2015

entertain their plea because of the bar of jurisdiction, thus, when the departmental appellate authority has not decided their cases within 90 days, as required under the rules, it would be inadvisable and in violation of the rules on the subject to refer the case to the departmental authority, therefore, the office is directed to send this case in original to the Registrar of the Provincial Service Tribunal having jurisdiction in the matter while a set of photocopy be retained.

Petition disposed of.

Sgt Dost Muhammad Khan
Sgt Major Ahmad Sethi

CHIEF JUSTICE

JUDGE

CERTIFIED
 Punjab & Frontier Provinces
 Authorized Under
 The District Judges
 01 DEC 2015

PC 25/200

[Signature]

26-11-15
Advt. Registrar
29/3

11165

M.P.

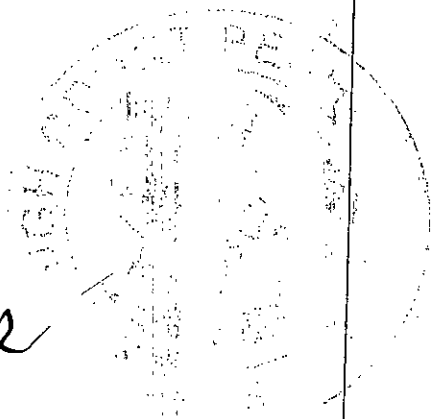
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01-12-15

Attested
Kasimullah
Advocate for



Office
29/3
 No. of Delivery of
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 204 OF 2017

MR. RUFAQ AHMAD.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary.
 2. Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
 3. Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
 4. Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- Respondents

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 02.

Preliminary Objections:-

1. That the appellant has no cause of action/locus standi.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the appellant has bad for non-joinder and mis-joinder of unnecessary parties.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate the matter.

ON FACTS:

1. Pertain to record.
2. Pertain to record.
3. Pertain to record.
4. Pertain to record.
5. Incorrect to the extent that the Govt. of Khyber Pakhtunkhwa Health Department has notified that the approved Service Structure vide

Notification No. SOH-III/8-60/05(Paramedics) dated 10/05/2006, wherein the 57 Cadres of Paramedics were restructured into 14 Cadres for one time up-gradation/Promotion as mentioned in the (sub-para-05) of the Service Structure and subsequently, superseded the said Notification by issuance of Notification NO. SOH-III/8-60/05(Paramedics) dated 25/08/2006, wherein also deleted (sub-para-05) regarding one time up-gradation/Promotion of Paramedics.

6. Pertain to record
7. Pertain to record.
8. Correct to the extent that anomaly committee has already been constituted by the Govt. of Khyber Pakhtunkhwa Health Department, wherein the promotion case of the petitioner has been discussed and rejected as not covered the under/policy. (copy of the rejection order is annexed)
9. Incorrect to the extent that only sub-para-05 regarding one time up-gradation/Promotion has been deleted from the Notification No. SOH-III/8-60/05(Paramedics) dated 25/08/2006.
10. Incorrect to the extent that in light of the Notification dated 10/05/2006 and dated 25/08/2006, the post of BPS-18, BPS-19 and BPs-20 are required to be filled in on the basis of joint Seniority-cum-fitness from amongst the Clinical Technologist BPS-17. According to the approved Service Rules vide Notification No. SOH-III/8-60/05 dated 07/01/2008, which was subsequently amended vide Notification No. SOH-III/8-60/05(Paramedics) dated 10/05/2016, while the petitioner has already been retired from Govt. Service on 04/03/2009. (copy of the notification is annexed)
11. Incorrect to the extent that the up-gradation/Promotion process was initiated within reasonable time due to which so many paramedics were upgraded/promoted to the net high scale up to BPS-17 in the light of the Notification NO. SOH-III/8-60/05(Paramedics) dated 09/05/2012.
12. Fully explained in para-11/10 above. More so, the appeal of the petitioner has already been rejected by the anomaly committed constituted by the Govt. of Health Department, as the same is not covered under the Rules/Policy.
13. Pertain to record. However, due to absence of final order this Hon'ble Tribunal has no jurisdiction to adjudicate the matter.

Grounds:

- a. Incorrect. The appellant acted in accordance with law & rules.
- b. Incorrect! The appellant has been dealt with accordance with law & rules.
- c. As per rules above.
- d. As per para "A".

Prayer:

Keeping in view of the above, it is prayed that the instant appeal may kindly be dismissed with cost.



Secretary, Health Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 01 & 02

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Annex

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Dated Peshawar the 10th May, 2006

NOTIFICATION

NO.SOH-III/8-60/05(Paramedics). In pursuance of the decision taken by the provincial cabinet in its meeting held on 27th December 2005, the Competent Authority is pleased to approve eight stage paramedics services structure of NWFP with effect from 27-12-2005. The salient features whereof shall be as under:-

1. The existing 57 different categories of paramedics as mentioned in annexure A to this notification are restructured into 14 cadres as per annexure B.
2. In all the aforesaid cadres/specialties, the posts in various pay scales shall be integrated/categorized and re-nomenclatured as under:-

S.No	Existing Posts	Re-structured posts
I)	Posts in BPS-5 to BPS-9 in all specialties.	Junior Technicians (BPS-9)
II)	Posts in BPS-10 to BPS-12 in all specialties.	Technicians (BPS-12)
III)	Posts in BPS-13 to BPS-14 in all specialties.	Senior Technicians (BPS-14)
IV)	Posts in BPS-15 to BPS-16 in all specialties.	Chief Technician (BPS-16)
V)	Post in BPS-17 in all specialties.	Technologist (BPS-17)
VI)	Posts in BPS-18 in all specialties.	Senior Technologist (BPS-18)
VII)	Posts in BPS-19 in all specialties.	Chief Technologist (BPS-19)
VIII)	Post in BPS-20 in all specialties.	Principal Technologists (BPS-20)

The words "clinical" shall be mentioned with the categories of posts meant for paramedics working in the hospitals and "Primary Health Care" with the paramedics working in the field along with mention of specific specialty (e.g. Junior Clinical Technician (Radiology) and Junior Primary health Care Technician (Multi-purpose).

3. The number of Posts in BPS-20, BPS-19, BPS-18, BPS-17, BPS-16, BPS-14, BPS-12, and BPS-9 shall be according to the proportionate ratio based on the total 8965 posts as mentioned in the provincial budget book for financial year 2005-2006. The proportionate ratio of 8 stage formula shall be as under:-

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BPS	%	No. of posts
Post in BPS-9	80%	7172
Post in BPS-12	12%	1076
Post in BPS-14	3.5%	314
Post in BPS-16	2.5%	224
Post in BPS-17	1.86%	167
Post in BPS-18	0.09%	8
Post in BPS-19	0.04%	3
Post in BPS-20	0.01%	1

However additional posts shall be created for any of the left over personals of paramedics cadre (if any). Moreover, subsequent creation of posts in any of the 14 paramedics cadres in any scale shall also be included in the aforesaid proportionate ratio of posts in the 8 tiers formula. The proportionate ratios of posts in BPS-12 and above shall be modified accordingly as and when new creation of posts are made in BPS-9 in each of the 14 cadres subsequently.

4. Seniority of the incumbents of the posts in the 14 cadres so merged shall be caused on the basis of scale wise seniority as well as date of regular appointment in the pay scale. (e.g. in joint seniority list of BPS-12, the official already in BPS-12 will be placed on the top of the list and the officials in the lower pay scale shall be accordingly placed step by step in the list, invariably keeping intact the inter-se-seniority of the incumbents in the same pay scale).
5. In the first instance, the higher posts in the re-structured 14 paramedics cadres as per annexure "C" shall be filled in by way of promotion, as one time exercise, where-after the service rules duly prescribed as at annexure D shall be followed in subsequent promotion/initial recruitment.
6. Promotions in the post in BPS-18, 19 and BPS-20 shall be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres shall be caused at BPS-17 level keeping in view the principles laid down in section 8 of the NWFP civil servants (ACT), 1973 read with Rule-17 of the NWFP civil servants (appointment, promotion and transfer) rules, 1989.
7. The afore-said paramedics service structure into 14 cadres shall also be applicable mutatis-mutandis to the paramedics working in FATA and employees working in Districts, all autonomous, semi-autonomous and corporate bodies.
8. There shall be a council of paramedics to notified separately.
9. The approved implementation committee and anomaly committee shall also be notified separately.
10. This eight stage paramedics service structure will replace all existing categories, cadres, structures and nomenclatures and will cancel all such cadres/ categories rules and regulations etc which are in contravention to the approved paramedics services structure. New posts in all type of Health Delivery System will be created in future in accordance

4. Pertain to record.

5. Incorrect to the extent that the Govt. of Khyber Pakhtunkhwa Health

with the frame work of this service structure. Any new specialties will be added in the frame work of approved paramedics service structure.

Sd/xxx

(ADBUS SAMAD KHAN)
SECRETARY HEALTH

Endorsement No. & date as above.

Copy forwarded to the:-

1. Secretary to Governor, NWFP.
2. Secretary to Chief Minister, NWFP.
3. Secretary (FATA) Governor's Sectt (FATA), Peshawar.
4. Secretary to Govt of NWFP, Finance Deptt: with the request to notify all the post duly re-structured and renamed accordingly so that the same may be included in the budget book 2006-17.
5. All Administrative Secretaries to Govt. of NWFP.
6. Accountant General, NWFP.
7. Director General, Health Services, NWFP with direction to communicate to all concerned and initiate implementation of service structure completing all promotions by 30th June 2006.
8. Inspector General of Prisons, NWFP.
9. Director General Social Security, NWFP.
10. Director, PHSA, NWFP.
11. Dr. Mahmood Alam, Chairman, Paramedics Service Structure Committee, PHSA, NWFP.
12. The Chief HSRRU for information with the direction to ensure implementation of service structure in future ADP and regular program.
13. The Chief Planning Officer Health Department for information with the direction to ensure implementation of service structure in future ADP and regular program.
14. Director Health Services (FATA), Peshawar.
15. All Chief Executives in teaching Hospitals in NWFP.
16. All Medical Superintendents in DHQ Hospital in NWFP.
17. All Executive District Officer (Health) in NWFP.
18. Director of Information, NWFP.
19. All Agency Surgeons in FATA.
20. Principal KMC/KCD, Peshawar.
21. Dean, P.G.M.I, Peshawar.
22. All District Accounts Officer in NWFP.
23. All Agency Accounts Officer FATA.
24. Ps to Chief Secretary, NWFP.
25. PS to Minister for Health, NWFP.
26. President, Provincial paramedical Association, NWFP, Peshawar.
27. The Manager Govt. Printing Press, NWFP.

(Alamzeb Malik)
Section Officer Health -III