

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Rejoinder

IN

Service Appeal NO.7787/2021

Razeem Khan .....Appellant

**VERSUS**

The Chief Secretary and others.....Respondents


**I N D E X**

S.No.	Description of documents.	Annexure	Pages.
1.	Rejoinder		1-5
2.	Affidavit.		6
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4.	Copy of Notification dated 27.05.2022		8

Dated: 27.10.2022

  
Petitioner

Through

  
~~Davis Khan~~  
Advocate Supreme Court

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa - day  
SIR FATEH ULLAH  
Entry No. 1727  
Dated: Registrar

Rejoinder

IN

Service Appeal NO.7787/2021

Razeem Khan .....Appellant

**VERSUS**

The Chief Secretary and others.....Respondents

REJOINDER TO THE PARAWISE COMMENTS/  
REPLY OF RESPONDENT NO 1 to 4.

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS;**

- 1) That the appellant has cause of action/locus standi to file the instant appeal.
- 2) That the appeal is maintainable in present form.
- 3) That the appellant is rendering his services regularly, punctually, devotedly, fairly, transparently and with honesty but unfortunately his honesty is problem for appellant. There is no malafide on part of appellant in filing appeal. Furthermore, DG Health (respondent No.3) issued instruction to all DHOs and MSs of all hospitals of Khyber Pakhtunkhwa to adjust all promoted technicians/technologists and immediately relieve the BS-12 paramedics vide letter dated 15.10.2021 and also issued notification whereby all DHOs and MSs of all hospitals of Khyber Pakhtunkhwa were directed and refrained them from unauthorized relieving of officers in BS-17 and above on 27.05.2022.

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- 4) That the appellant has not concealed any facts from this Hon'ble Tribunal. Charge assumption report/ certificate annexed by appellant as annexure "D" page 15 is genuine which was not accepted by Personal Secretary (PS) to MS (Muhammad Khaliq). Appellant has not made any tampering but Respondent No.4 (MS) was committed to transfer appellant from GNKBM Hospital malafidly. On 11.08.2021 competent authority promoted appellant as Senior Clinical Technologist BPS-18 on regular basis and on 07.09.2021 vide office order Respondent No.4 (MS) directed appellant to perform duty as Senior Clinical Technologist BPS-18 as In-charge of Radiology Unit of GNKBMH with immediate effect till further order, on recommendation of HOD Dr.Muhammad Ijaz Khan and he was performing duties as such there. On 28.09.2021 competent authority was pleased to order transfer and posting of Senior Clinical/ PHC Technologists BPS-18 at that time appellant was rendering services at NKBMH as Senior Clinical Technologist BPS-18 In-Charge Radiology Unit and Respondent No.5 (Muhammad Jamil) was waiting for posting in Health Department, On 06.10.2021 Respondent No.4 relieved appellant to Department and malafidly adjusted respondent no 5 on same post in violation of seniority rules and precedents. It is surprising that on 07.10.2021 respondent No.4 has issued office order and directed respondent no 5 to perform duty as In-charge Radiology wherein the appellant is malafidly shown as inferior to respondent No 5 at Page 18 of appeal. On recommendation of Head of Radiology Department appellant filed a report against regular absentee who was apple of eyes of respondent No.4 is main cause of headache of appellant in Department.
- 5) Appeal is within time.
- 6) Principle of estoppel is not applicable over the appellant.
- 7) Appellant is senior to respondent no 5 and was rendering services at NKBMH had the priority to serve therein because after promotion he performed services as In-Charge Radiology Unit, beside that there

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were other vacant post for adjusting respondent no 5 but malafidly concerned respondent has adjusted respondent no 5 against the post on which appellant was serving.

REJOINDER TO PARAWISE COMMENTS/ REPLY ON FACTS:

1. In response of Para No.1 of Para wise reply, it is submitted that the impugned order/ notification has been issued on personal whim of concern respondents in violation of section 24 A General Clauses act.
2. In response of Para No.2 of Para wise reply, it is submitted that after promotion of appellant, he was performing duty as In-Charge Radiology Unit being senior to respondent no 5, appellant has priority to serve therein. There were vacant post in NKBM, concerned respondent would have to adjust the respondent no 5 against those vacant post.
3. In Response of Para 3 of wise reply, it is submitted that transfer and posting notification was issued on 28.09.2021, appellant was senior and has the preferential right to be adjusted against the original cadre post at GNKBM Hospital. The detail is given in preceding paras.
4. In response of Para no.4 of Para wise reply, it is submitted that internal correspondence of Hospital are mostly running through PA To Medical Superintendent have no diary record. When the PA has not accepted the arrival report and returned to appellant, thereafter appellant was relieved to respondent No 3.the remaining para of para wise reply of respondents is incorrect. Action is required to be taken against Respondent no 4 who has miss-used his authority.
5. In response of para no 5 of para wise reply, it is submitted that the appellant was working against the sanctioned post after transfer and posting order. Seniority play important role in posting and transfer policy when the authority is not exercising justly, fairly and transparently. Appellant time and again approached high authorities

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for redressal of his grievance but in vain. Appellant has no other source of income except salary and his children are studying in different colleges and universities, in such like circumstances appellant had no other option but to assume charge as protest on the post mentioned in the notification dated 03.12.2021 thereafter the appellant was further posted to CD Landi Arbab (Pvt Center) Peshawar on 10.01.2022 malafidly.

6. In Response of Para No.6 of para wise reply, it is submitted that the appellant has preferential right to be adjusted against the said sanctioned post then respondent no 5 . the para wise reply of respondents is incorrect.
7. In response of Para No.7 of para wise reply, it is submitted that the appellant was most senior, competent, devoted and punctual, serving against the said sanctioned post then what has constrained respondents to replace him by respondent no 5. Taking charge at belated stage would not entitle respondent no.5 to serve against a post.
8. In response of para 8 of para wise reply, it is submitted that the impugned notification is not issued in public interest. Remaining para wise reply is totally incorrect. Appellant filed report against habitual absentee who was apple of eyes of the respondent no 4, on the recommendation of the HOD Radiology is main reason of uneasiness for concerned respondents. Appellant has never filed any complaint against any one.
9. Para wise reply no.9 is incorrect, the appellant is aggrieved person and approached this honorable tribunal for the redressal of his grievance.

REJOINDER TO PARAWISE REPLY ON GROUNDS;

- A) Para wise reply of Ground A is wrong and incorrect.

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- B) Para wise reply of ground B is incorrect the detail is given in preceding paras.
- C) Para wise reply on ground C is incorrect and that ground of appeal is correct.
- D) Para wise reply on ground D is incorrect. Detail is given in above paras.
- E) Para wise reply on ground E and F is incorrect and detail is given in preceding paras.
- J) Legal, hence needs no comments.

It is therefore, most humbly prayed that on acceptance of this rejoinder to para wise reply, impugned notifications and orders may kindly be set aside and the appellant may be retained as such at Government Naseerullah Khan Babar Hospital Peshawar with all service benefits.

*Romp*  
Petitioner

Through

*[Signature]*  
**Daris Khan**  
Advocate Supreme Court.

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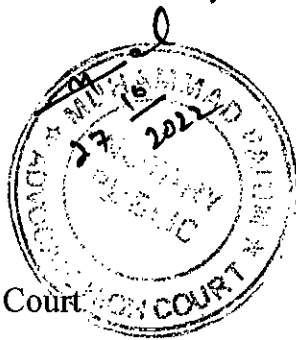
AFFIDAVIT


I, Razeem Khan son of Fazal Rehman R/o Mohallah Babu Banda, Toru Maira, District Mardan (petitioner) do hereby affirm and declare on oath that the contents of the instant REJOINDER are true and correct to the best of my belief and nothing has been concealed from this Hon'ble Court.

ATTESTED

Identified by:

  
Dais Khan  
Advocate Supreme Court



  
Deponent  
CNIC 16101-9463009-1  
Cell: 0333-9118930



**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to The Director General  
Health Services Peshawar and not to any official by name  
Office Ph. (021) - 9210101 Fax (021) - 9210107  
Office Ph. (021) - 9210102 Fax (021) - 9210106  
Office Ph. (021) - 9210103 Fax (021) - 9210104  
Office Ph. (021) - 9210105 Fax (021) - 9210108

Anet-A

(7)

No. 14174-249 AE.VI, Dated Pesh: the 15/10/2021.

To:-

01. All District Health Officers in Khyber Pakhtunkhwa.
02. All Medical Superintendents Health Department  
in Khyber Pakhtunkhwa.

Subject:- ADJUSTMENT OF PROMOTED TECHNICIANS  
Memo

The long awaited Promotion process of various grades of Paramedics is in progress. More than 3500 Paramedics have been promoted in upper grades during the last few months and more cases are in pipeline.

During 2018 a huge number of Paramedics Posts have been upgraded from BS-12 to higher grades (BS-14, 16, 17, 18 & 19), consequently a huge number of Paramedics of BS-12 were adjusted against these upgraded posts.

The undersigned has observed with great concern that some of the DHOs and MSs are not adjusting the newly Promoted Paramedics against their original posts against which Promotions were done.

You are hereby directed to immediately relieve the BS-12 Paramedics and their Services may be placed at the disposal of this Directorate on the arrival of newly Promoted Paramedics posted by this Directorate against their original post, if they become surplus.

  
DIRECTOR GENERAL HEALTH  
SERVICES, KP PESHAWAR





**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to the Director General Health Services  
Peshawar and not to any official by name E-Mail Address E.P. Subhan@khyber.gov.pk  
Wazirat Road Peshawar

NO. 2303-83 (E-1)

Dated 27/5/2022

Attet

(S)

To

1. All District Health Officers in Health Department Khyber Pakhtunkhwa
2. All Medical Superintendents, Health Department Khyber Pakhtunkhwa

Subject: UN-AUTHORIZED RELIEVING OF OFFICERS IN BPS-17 AND ABOVE.

It has been noted with grave concern that various sub-offices especially DHOs and MSs in Health Department Khyber Pakhtunkhwa have been relieving officers in BPS-17 and above working under their administrative control and directing them to report to DGHS, Khyber Pakhtunkhwa. On the one hand such un-authorized practice is against the delegation of administrative powers in Health Department but on the other hand it leads to administrative issues and sometimes adverse legal consequences.

It may be noted that relieving of an officer is in substance transfer of an officer outside your administrative control which the DHO and MS is not competent to order.

DHO/MS is the Appointing Authority for the post below BPS-16. You instead of relieving the officer/official to DGHS may take necessary/disciplinary action at your end. Referring service matters of such personnel not only causes inconvenience to the concerned employee but also increases work load on this office un-necessarily. Such practice creates misconceptions in the minds of employee whose cases are un-duly referred to this office

You are hereby directed to refrain from such practice in future, and where if so required for compelling reasons, the matter must be referred to this office for appropriate orders with full justification instead of relieving the officer.

These instructions must be followed in letter & spirit to avoid any administrative & legal complications in future.

*[Signature]*  
Director General Health Services  
Khyber Pakhtunkhwa Peshawar

CC:

Secretary to Govt. of Khyber Pakhtunkhwa Health Department for information.

File No. 3290
Date 31/05/2022
18:05

*[Handwritten initials and signatures]*