



KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 7316/2022

Asfandyar

Vs

Health Department

REPLY ON BEHALF OF RESPONDENT NO. 4

Khyber Pakhtunwa
Service Tribunal

Entry No. 3541

Dated 13/2/2023

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Respondents

Through


Asad Mahmood

Advocate High Court

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 7314/2021

Asfandyar

Vs

Health Department

REPLY ON BEHALF OF RESPONDENTS NO. 4

PRELIMINARY OBJECTIONS:

- i. *The instant appeal is not maintainable for having no cause of action and locus standi to file the instant appeal by appellant.*
- ii. *The appellant is estopped by his own conduct.*
- iii. *Stepping into two different boats simultaneously sailing in the opposite directions, proves malafide at petitioner's end.*
- iv. *The instant service appeal is not maintainable before this Hon'ble Tribunal for being barred by limitation because impugned promotion order was passed on 1st February, 2018 and challenged in the year 2021.*
- v. *The appellant is barred by law and limitation to file the instant service appeal.*
- vi. *The matter in question, being a past and close transaction, is liable to be hit by limitation.*
- vii. *Law is meant to rescue vigilant rather than indolent, hence appellant at this point of time can not knock the door of court of law.*

FACTS:

1. *Subject to proof because appellant is serving as Senior Clinical Technician Anesthesia (BPS-14) and not in BPS-16. No promotion order of BPS-16 is attached herewith to prove his promotion to BPS-16.*
2. *Correct to the extent that appellant acquired degree in BS(Hons) Paramedical Science from Peshawar University BUT IN THE YEAR 2017. Rest of the para is denied. FURTHER, the degree*

awarded to appellant is not valid for appointment/promotion because Khyber Pakhtunkhwa Medical Faculty is not a recognized institute to award degree in B.Sc (Anesthesia) BUT AFFILIATED WITH UNIVERSITY. Only those universities/institutions/authorities can award degrees who are empowered/authorized, by Federal or Provincial Government, in schedule under section (3) of the Medical and Dental Degrees Ordinance 1982.

SCHEDULE

Section 3 of the ibid Act:

- I. Every university in Pakistan established through an Act passed by federal, provincial legislature.
 - II. College of physician and surgeon of Pakistan.
3. **Incorrect and misleading.** The instant notification have no over-riding effect over section 3 of the ibid Act.
 4. **Subject to proof.** However, the Service Rules for Paramedics have been promulgated vide Notification dated 10th May, 2016 and all the previous notifications issued in this behalf were superseded.
 5. **Incorrect.** Promotion quota has not been reduced to 20% quota but the seniority list of degree-holders segregated from the main seniority list of promotes on seniority cum fitness.
 6. **Incorrect.** The appellant acquired degree in BS(Hons) Paramedical Science from Peshawar University BUT IN THE YEAR 2017 and not in 2007 and therefore, appellant is rightly placed at serial no. 15 in the seniority list.
 7. **Incorrect and misleading, hence denied.** The respondent no. 4 being a senior most amongst eligible, was rightly promoted to the post of Technologists (BPS-17) through impugned order.
 8. **Subject to proof.**
 9. **Subject to proof.**



10. *Subject to proof.*
11. *No comments.*

LEGAL GROUNDS:

- A. *Incorrect. The impugned promotion order of respondent no. 4 has been passed in conformity with law in field.*
- B. *Incorrect. No vested right accrued to appellant and respondents acted in accordance to law to save justice from being defeated.*
- C. *Incorrect. The impugned promotion order has been passed in the light of seniority list (Annexure-A) issued in compliance of notification dated 10th May, 2016 and has not been discriminated by any definition of law.*
- D. *Incorrect. Already explained in preceding para.*
- E. *Incorrect. Already explained in preceding para.*
- F. *Seeking permission to advance other grounds at the time of arguments.*

Respondent no. 4

Through

**Asad Mahmood
Advocate High Court**

AFFIDAVIT

It is hereby solemnly affirm and stated on oath that all the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble tribunal.



Deponent