

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

**Service Appeal No. 545/2022**

Khyber Pakhtunkhwa  
Service Tribunal

Petition No. 3700

Dated 21/2/2023

Hamayoun ----- Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

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*Punji*

Section officer (Lit-II)  
Govt: of Khyber Pakhtunkhwa  
Health Department

**Section Officer (Lit-II)**  
**Health Department**  
**Khyber Pakhtunkhwa**

(03)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL PESHAWAR**  
**SERVICE APPEAL NO. 545/2022**

Hamayoun.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa and others.....Respondents

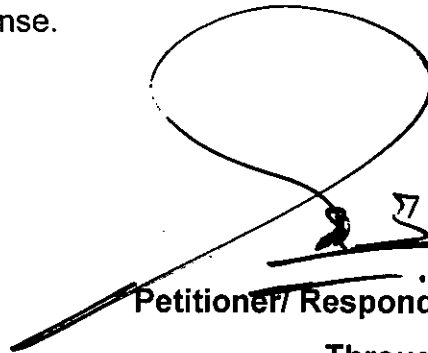
**APPLICATION FOR SETTING ASIDE EX-PARTE PROCEEDINGS AGAINST THE**  
**PETITIONER/ RESPONDENTS No. 01&02**

Respectfully Sheweth,

The petitioners/ respondents No. 01&02 submits as under:

1. That the above titled Service Appeal is pending before this honorable Tribunal in which next date of hearing is 24-02-2023.
2. That the petitioners were proceeded ex-parte vide order 04-11-2022 whereas representative of the petitioners were present before another bench of the honorable Tribunal and comments on behalf of the petitioners was in process. Therefore, neither the absence nor did delay in filling the comments was intentional.
3. That valuable rights of the public at large is involved with the instant appeal therefore, setting aside ex-parte proceedings is in the interest of justice.

It is therefore, requested that on acceptance of the instant application the ex-parte proceedings may graciously be set aside and the respondents may kindly be provided opportunity of defense.



Petitioner/ Respondents No. 01&02

Through

**Additional Advocate General Service Tribunal**  
**Khyber Pakhtunkhwa**

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE**  
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**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01&02 .**

**Respectfully Sheweth:**

**Preliminary Objections:-**

1. That the Appellant has got neither cause of action nor did locus standi to file the instant Appeal.
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 its present form and also in the present circumstances of the issue.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant Appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

**Facts**

1. Pertains to Record.
2. Pertains to record.
3. Subject to proof.
4. Correct to the extent that appellant was at S No. 24 of the seniority list but in 2016/17 only 5 vacant posts (20% reserved quota for degree holders) were available therefore he was not in the promotion zone being junior hence he was not considered for promotion.
5. Incorrect. The seniority list of pathology Degree holders was disputed therefore the promotions were not made in the Pathology cadre. Moreso vacant posts were not available in the budget book in 2018.
6. Incorrect. As per Notification of the Finance Department Khyber Pakhtunkhwa, after ratio enhancement of the posts of Paramedics the service Rules were required to be amended. The service rules of Paramedics were amended in November 2020, therefore the promotions were not made during the year 2019.
7. The appellant was promoted to BPS-17 on 5-11-2021 after availability of the necessary posts as well as required revised service rules as per direction of

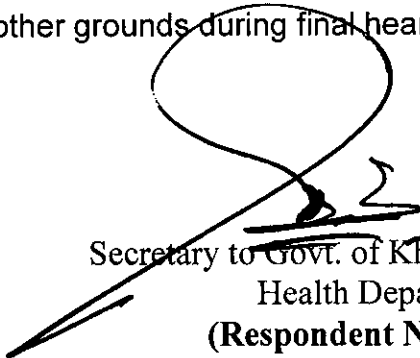
(2)

Finance Department. It is worth to mention that the appellant was promoted with immediate effect as per promotion policy of the provincial government.

8. Incorrect. The departmental appeal was considered and regretted by the appellate authority in accordance with Law, Rules and Policy.

**Grounds**

- A. The respondents have not violated any rules & Policy of the Government. He has been treated in accordance with Law, Rules and Policy.
- B. Incorrect. The appellant has already been promoted after occurring of vacancy as explained in Para-7 of the facts. It is worth to mention that the Apex Court has already laid down the principle that each and every case has different facts and circumstances and each shall be decided in accordance with its own merit.
- C. Incorrect. Already explained in Para-B above.
- D. Incorrect. Already explained in para A of the grounds.
- E. Incorrect. Already explained in para A of the grounds.
- F. Incorrect. Already explained in para B above.
- G. Correct to the extent of promotion of a civil servant however, the appellant has been treated in accordance with law and rules.
- H. Incorrect. Already explained in Para-B above.
- I. Incorrect. Already explained in the above paras.
- J. The replying respondents also seek permission of this honorable tribunal to adduce other grounds during final hearing of the case.

  
Secretary to Govt. of Khyber Pakhtunkhwa  
Health Department  
(Respondent No. 01&02)

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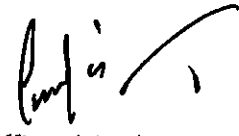
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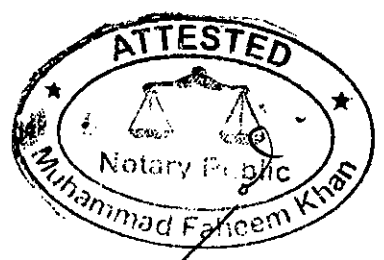
**AFFIDAVIT.**

I Mohammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint Para-wise comments in Service Appeal No. 545/2022 at Page-1-2 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.



Section officer (Lit-II)  
Govt: of Khyber Pakhtunkhwa  
Health Department  
**Section Officer (Lit-II)**  
**Health Department**  
**Khyber Pakhtunkhwa**

Identified by:-



Add: Advocate General,  
Khyber Pakhtunkhwa

27/02/2023