

Service Appeal No.480/2018 titled "Khair-Ur Rehman-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others" and connected Appeal No. 482/2020 titled "Noor Ali Khan-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others"; Appeal No. 483/2020 titled "Muhammad Saleem-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others", and Appeal No.484/2020 titled "Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others" decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rozina Rehman, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

SCANNED
KPST
Peshawar

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
ROZINA REHMAN ... MEMBER (Judicial)

Service Appeal No.480/2018

Date of presentation of appeal22.03.2018
Dates of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Khair Ur Rehman S/O Bahadar Khan, JCT, Pharmacy BAU, Arif Kali,
Lower Dir.**

.....(**Appellant**)

Versus

1. **Secretary to Govt: of Khyber Pakhtunkhwa** Administration and Establishment Department, Civil Secretariat, Peshawar.
2. **Secretary to Govt: of Khyber Pakhtunkhwa,** Finance Department, Civil Secretariat, Peshawar.
3. **Secretary** Khyber Pakhtunkhwa Medical Faculty Peshawar.
4. **Secretary to Govt: of Khyber Pakhtunkhwa,** Health Department, Civil Secretariat, Peshawar.
5. **Directorate General,** Health Services Department, Khyber Pakhtunkhwa, Peshawar.

.....(**Respondents**)

Present:

Mr. Muhammad Anwar,
Advocate.....For appellant.

Muhammad Riaz Khan Paindakhel,
Assistant Advocate General.....For respondents.

.....
.....
**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ACT OF RESPONDENTS/DEPARTMENT OF NON-
ENCLOSURE THE NAME OF THE APPELLANT IN THE
QUALIFIED PARAMEDICS SENIORITY LIST AND NON-**

Service Appeal No.480/2018 titled "Khair Ur Rehman-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others" and connected Appeal No. 482/2020 titled "Noor Ali Khan-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others", Appeal No. 483/2020 titled "Muhammad Saleem-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others", and Appeal No.484/2020 titled "Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others" decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

CONSIDERING THE APPELLANT DESPITE ELIGIBILITY AND HAVING THE REQUISITE QUALIFICATION OF B.SC DEGREE IN PHARMACY, OBTAINED FROM MEDICAL FACULTY KHYBER PAKHTUNKHWA PESHAWAR IN THE SESSION 2004-2005 FOR THE POST OF CLINICAL TECHNOLOGIST/PHC TECHNOLOGIST BPS-17, UNDER 20% QUOTA RESERVED FOR PROMOTION AGAINST WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT HAVE BEEN REJECTED VIDE MINUTES OF THE MEETING HELD ON 22.01.2018 UNDER THE CHAIRMANSHIP OF SECRETARY HEALTH DEPARTMENT/RESPONDENT NO.4 WHICH MINUTES HAVE BEEN COMMUNICATED TO THE DIRECTOR GENERAL, HEALTH SERVICES/RESPONDENT NO.5 THROUGH LETTER BEARING NO SOH-III/8-602/2017 (QUALIFIED PARAMEDICS) DATED THE PESHAWAR 21ST FEBRUARY, 2018 AND SUBSEQUENTLY SERVED UPON THE APPELLANT ON 23.02.2018 (COPY OF THE DIRECTION IS ANNEXED AS ANNEXURE "AA").

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No. 482/2020 titled "Noor Ali Khan-vs-Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others", service appeal No. 483/2020 titled "Muhammad Saleem-vs- Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others", and service appeal No. 484/2020 titled "Secretary to Government of Khyber Pakhtunkhwa Administration and Establishment Department, Civil Secretariat, Peshawar and others" are being decided as all the four appeals are regarding the same facts, circumstances and the matter in issue.



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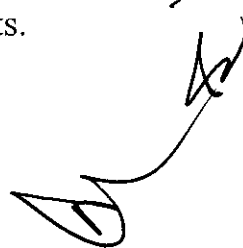
2. According to the facts gathered from the record, the appellants were appointed in the Health Department in the capacity of Dispenser/Compunder/Dresser, the then combined cadre BPS-06 on 21.11.1989; that the Provincial cabinet, vide its decision dated 22.06.2000, had declared the combined cadre of Dispenser/Compunder/Dresser as dying cadre which had been replaced with the new and existing nomenclature of Pharmacy Technician; that the respondent/Medical Faculty through advertisement in the leading daily's, invited applications from in service candidates as well as fresh candidates for two years Bachelor Degree of Science in Pharmacy Technology and the appellants, being employees of the respondent department, applied, through proper channel, for admission and the appellants, on the basis of their merit position, were selected in B.Sc in Pharmacy Technology, Session 2004-2005 by respondent department with issuance of proper NOCs in their favour, followed by sanction of study leave; that the appellants have successfully completed their B.Sc in Pharmacy Technology and have passed their examination; that respondent department vide notification No. SOH-III/8-60/05 (Paramedics) dated 25.08.2006 approved eight stages paramedics service structure of the then NWFP now Khyber Pakhtunkhwa Paramedics Staff; that vide notification dated 14.10.2016, the Khyber Pakhtunkhwa Faculty of Paramedical and Allied Health service Bill, 2016 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 26.09.2016 and assented to by the Governor of the Khyber Pakhtunkhwa on 06.10.2016, had been published as an Act of the



Provincial Legislature of the Khyber Pakhtunkhwa; that respondent department vide notification No. SOH-III/HD/3-5/2014 dated 10.05.2016 in supersession of all notifications issues in this behalf by the Health Department in consultation with Administration/Establishment Department and the Finance Department had laid down the method of recruitment specified in column 3 to 5 of the appendix to the posts of paramedical staff in the Health Department Specified in column 2 of the said appendix; that the Finance Department vide notification No. SO(FR)FD/7-3/2015/paramedics dated 11.08.2015 had up-graded all the Paramedics Staff with immediate effect in the terms and conditions mentioned therein the notification; that the respondent department had issued provisional seniority list of the paramedics on 22.08.2017, and ignored the appellants against which the appellants filed departmental representation which was rejected vide minutes of the meeting held on 22.01.2018, hence the instant service appeals.

3. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.



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5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned order.

6. It is the case of the appellants that according to the latest rules in vogue notified vide notification No. SOH-III/HD/3-5/2014 dated 10.05.2016 as they were entitled to further promotion but the respondents had not promoted them despite being eligible and senior. The respondents in their reply had raised only one objection i.e. in paragraph-11 according to which the appellants had obtained degrees from the Khyber Pakhtunkhwa Medical Faculty and not from the University, therefore, their names had not been included in the seniority list of Degree Holders. Thus the only hurdle according to the respondents was the degree obtained by the appellants from the Khyber Pakhtunkhwa Medical Faculty whereas Sub-section-5 of Section-7 of the Khyber Pakhtunkhwa Faculty of Paramedical Allied Health Services Act, 2016, the degrees, certificates or Diplomas already granted by the Medical Faculty till the commencing date of the above Act, were admitted to the valid. When confronted with the above legal position, the learned Law Officer did not have anything to explain except to just support the written reply which stance of the Law Officer is not justified. The appellants are thus sanguine in seeking the relief prayed in the appeals. Therefore, we accept these appeals and direct that names of the appellants be included in the seniority list of the qualified Para-Medics and they shall also be considered for the promotion

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from which their juniors were considered if they otherwise eligible. Costs shall follow the event. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of March, 2023.*



KALIM ARSHAD KHAN
Chairman

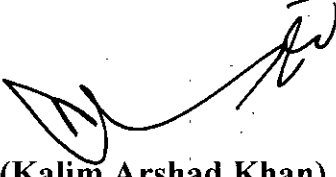


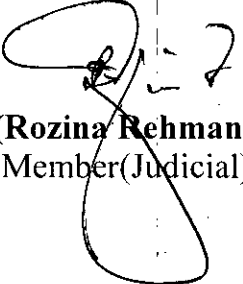
ROZINA REHMAN
Member (Judicial)

ORDER

3rd Mar, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.
2. Vide our detailed judgement of today placed on file, we accept these appeals and direct that names of the appellants be included in the seniority list of the qualified Para-Medics and they shall also be considered for the promotion from which their juniors were considered if they otherwise eligible. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 3rd day of March, 2023.*


(Kalim Arshad Khan)
Chairman


(Rozina Rehman)
Member(Judicial)