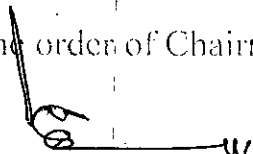


FORM OF ORDER SHEET

Court of _____

Case No.- _____

877/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 19/04/2023 | <p>The appeal of Mr. Syed Jamal Akbar presented today by Mr. Muhammad Adnan Sher Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on-</p> <p>_____</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p> |

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No: *877* 2023

Dr. Jamal Akbar

VERSUS

Govt of KP & Others

INDEX

| S. No. | Documents | Annexure | Page No. |
|--------|--|----------|----------|
| 1. | Writ Petition | -- | 01-05 |
| 2. | Affidavit | | 06 |
| 3. | Copy of extract of Rules, 2022 | "A" | 07-09 |
| 4. | Copy of Seniority List | "B" | 10-11 |
| 5. | Copy of Notification dated 05.07.2022 | "C" | 12 |
| 6. | Copy of the order of withdrawal dated 15.07.2022 | "D" | 13-14 |
| 7. | Copy of the Application | "E" | 15 |
| 8. | Copy of the judgment dated 17.03.2023 | "F" | 16-20 |
| 9. | Court Fees/- | -- | -- |
| 10. | Wakalatnama | -- | 21 |

Dated: _____, 2023

Jamal Akbar
APPELLANT

Through

Muhammad Adnan Sher
MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar

(1)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. **877** 2023

Dr. Syed Jamal Akbar

Son of Fazal Akbar, Resident of House No. 175, Street 3, Sector N/2, Phase IV,
Hayatabad Peshawar

..... **APPELLANT**

VERSUS

1. Government of Khyber Pakhtunkhwa

Through Chief Secretary (KP)
Civil Secretariat, Peshawar

2. Secretary Health (KP)

HRD Building, Khyber Road, Peshawar

3. Director General Health (KP)

Old Fata Secretariat, Warsak Road, Peshawar

..... **RESPONDENTS**

**SERVICE APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974**

Respectfully Sheweth;

1. That the appellant is a law-abiding citizen of Pakistan and entitled to equal protection and enforcement of legal and fundamental rights so contained in the Constitution of 1973.
2. That the appellant was Member of Service Health Management Cadre in the Health Department Khyber Pakhtunkhwa being governed by Management Cadre Service Rules, 2022 (*hereinafter referred to as Rules*) who served the Department on different positions for more than 26 years of exceptional and outstanding career. (Copy of relevant extract of Rules is hereby annexed as Annexure "**A**").
3. That before attaining the age of superannuation, the appellant was serving in Management Cadre (BPS-19) and was entitled to his due promotion being a senior and eligible candidate in the Seniority List and under the **Rules** however he was left deprived of promotion on one pretext or another by the respondents so much so that he got retired on 19.07.2022. (Copy of the Seniority List is hereby annexed as Annexure "**B**").

- 2
4. That it is pertinent to mention at this juncture, some new posts of Management Cadre in BPS-20 were created and upgraded during the service tenure of the appellant with the approval of Finance Department KP during CFY 2022-23 however even then the appellant was not promoted due to *malafide* of the respondents. (Copy of Notification dated 05.07.2022 is hereby annexed as Annexure "C").
 5. Needless to mention here that the last PSB in the service of appellant took place on 06.07.2022 and the appellant did all that he could to be considered and promoted before arrival of his date of superannuation and for the reason, the appellant on the verbal assurances of the respondents and having no other choice being at the verge of his retirement, even withdrew from proceedings pending before hon'ble Peshawar High Court, Peshawar and all this was done before the signing of the Minutes of the PSB and within time yet again at the eleventh hour, he was not promoted and got retired. (Copy of the order of withdrawal is hereby annexed as Annexure "D").
 6. That thereafter, the appellant moved several applications to the respondents to consider his case for promotion on circulation basis from BPS 19 to BPS 20 as a special case, but till date no response. (Copy of the Application is hereby annexed as Annexure "E").
 7. That the appellant again approached the hon'ble Peshawar High Court, Peshawar in W.P No. 3220-P/ 2022 against his grievances however the same was dismissed being not maintainable *vide* judgment dated 17.03.2023. (Copy of the judgment dated 17.03.2023 is hereby annexed as Annexure "F").
 8. That the appellant being disappointed by the action of the respondents and having no other alternate, sufficient and efficacious remedy available, files instant Appeal on the following grounds *inter alia*;

GROUND:

- A. That the action of the respondents to deprive the appellant of his due promotion in BPS-20, being amongst the top in the Seniority List and eligible under the Rules, before his date of retirement is absolutely illegal, unlawful, *void ab initio* and against the principles of natural justice.
- B. That the respondents had badly exploited the appellant due to his helplessness and being on weak footings, irrespective of the fact that he had rendered valuable services to the Department for more than 25 years yet again such conduct of respondents with the appellant is absolutely illegal and unjustified.

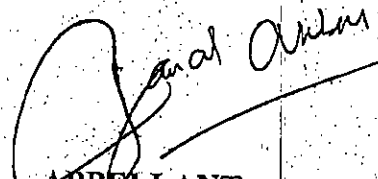
- C. *Without prejudice to the above and in addition thereto*, under the Rules, 2002 when five new vacancies in BPS-20 were created, the appellant was one of the most eligible and senior Member of Service as per Seniority List to be promoted for the said posts but even then, intentionally and *malafidely* letting him down at such stage is otherwise not tenable in the eyes of law and against equity.
- D. *Without prejudice to the above and in addition thereto*, the Finance Department KP agreed to the creation of 5 new budgetary posts in BPS-20 in DG Health Services and DG Provincial Services Academy and admittedly these posts existed before the retirement of the appellant but even then, dropping the appellant from promotion on lame pretexts by the respondents is glaring example of misuse of powers which is nullity in the eyes of law.
- E. *Without prejudice to the above and in addition thereto*, even after kneeling down to the unjust and illegal intimidation of the respondents, the appellant withdrew his W.P 1719-P/ 2022 on the verbal assurances of the respondents that the case of the appellant for circular promotion in BPS-20 would be sent as a Special Case and in the best hope and having no other option due to shortage of time, did whatever he could do but even then meting out such treatment to the appellant after withdrawal of his case, is absolutely illegal and against the principles of natural justice.
- F. *Without prejudice to the above and in addition thereto*, as reflected from the record, when the Minutes of the Meeting of PSB held on 06.07.2022 were yet to be signed whereby the case of the appellant was submitted after fulfilling all the codial formalities before that, then the same ought to have been considered and that too when the appellant even withdrew from litigation before this hon'ble court, yet again depriving him of promotion by the respondents at such stage is absolutely illegal.
- G. *Without prejudice to the above and in addition thereto*, it has been held in plethora of judgments of Apex Courts that any delay that is caused by the department whatever the nature may be due to which one suffers, the same could not be attributed and be suffered by the one who is not responsible just like it happened in the present case where there was no lacuna on behalf of the appellant yet he was not promoted and got retired which act of the respondents is clearly negation to the above referred established principle of law and seeks interference by this hon'ble Tribunal for grant of circular/ proforma promotion in BPS-20 .

- H. *Without prejudice to the above and in addition thereto, prima facie*, the respondents had for ulterior motives and to adjust their blue-eyed ones, intentionally kept the case of the present appellant till his retirement which is a glaring example of discrimination as against the spirit of fundamental rights as enjoyed by the appellant under the Constitution of Islamic Republic of Pakistan, 1973.
- I. That Article 4 of the Constitution of 1973 ensures right of the appellant to be dealt with in accordance with law however the respondents blatantly violated not only fundamental right but also the Rules/ law by depriving the appellant of promotion when he was duly eligible as per Seniority List and law.
- J. Moreover, the present case of the appellant is also violation of fundamental right as contained in Article 25 of the Constitution 1973, and therefore, requires interference by this hon'ble Tribunal for the purpose of securing the sanctity and spirit of the said Article and administration of justice
- K. Any other ground that may be raised at the time of hearing of this Appeal.

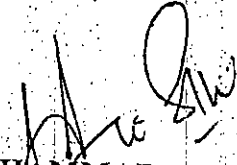
It is, therefore, respectfully prayed that on acceptance of instant Service Appeal, this hon'ble Tribunal may be pleased to;

- a. *Direct* the respondent/ respondents concerned to consider the case of the appellant for Proforma Promotion to BPS-20 as a Special Case in the coming scheduled meeting of PSB 2ith all back/consequential benefits as he was eligible, senior and post was also available for him.
- b. Any other relief, deem fit and proper in the given circumstances of the case, may also be granted.

Dated: _____, 2023


 APPELLANT

Through


 MUHAMMAD ADNAN SHER
 Advocate High Court, Peshawar

Certificate: It is certified that no such Service Appeal is pending or has been moved before this hon'ble Tribunal.



(5)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No: / 2023

Dr. Jamal Akbar

VERSUS

Govt of KP & Others

MEMO

APPELLANT

Dr. Syed Jamal Akbar

Son of Fazal Akbar, Resident of House No. 175, Street 3, Sector N/2, Phase IV,
Hayatabad Peshawar

VERSUS

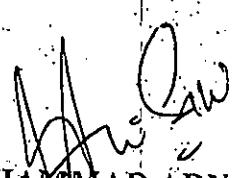
RESPONDENTS

1. Government of Khyber Pakhtunkhwa

Through Chief Secretary (KP)
Civil Secretariat, Peshawar

2. Secretary Health (KP)
HRD Building, Khyber Road, Peshawar

3. Director General Health (KP)
Old Fata Secretariat, Warsak Road, Peshawar


MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar

(6)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No: / 2023

Dr. Jamal Akbar

VERSUS

Govt of KP & Others

AFFIDAVIT

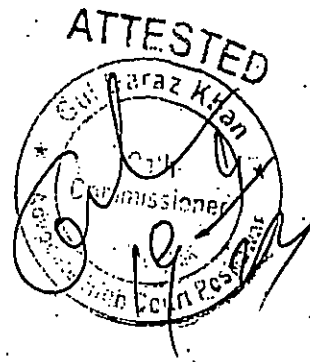
I, Dr. Syed Jamal Akbar Son of Fazal Akbar, Resident of House No. 175, Street 3, Sector N/2, Phase IV, Hayatabad Peshawar

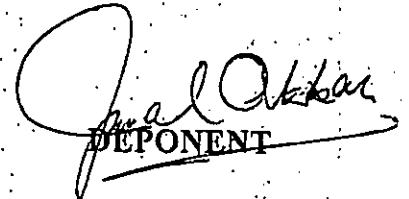
1. That the contents of this Service Appeal are true and correct to the best of my knowledge and belief &
2. That nothing has been concealed from the hon'ble Tribunal, which is necessary to disclose.

Identified by:



MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar




DEPONENT

Annex A
7

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Peshawar dated the 11th February, 2022.

No. SOI (E-V)/4-4/Management Service Rules, 2008/2022/ In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, the following further amendments shall be made, namely:

AMENDMENTS

1. In rule 4, the existing provision shall be numbered as sub-rule (1) of rule 4 and after sub-rule (1) as so renumbered, the following new sub-rule shall be added, namely:

"(2) Notwithstanding anything contained in sub-rule (1), in cases where no suitable officer amongst the members of Service is available for appointment against any post mentioned in Schedule-I, the respective appointing authority, under rule 17 of the Khyber Pakhtunkhwa Government Rules of Business, 1985, may post any suitable doctor from amongst the General Cadre doctors, having equivalent pay scale, to such post:

Provided that the General Cadre doctors so posted shall hold office during the pleasure of the respective appointing authority:

Provided further that the respective appointing authority may also consider one grade lower candidate for any position in the Management Cadre on his own pay scale.

(3) For the purpose of sub-rule (2), the Health Department, if deemed appropriate, may determine any criteria and/or mechanism for recommending to the relevant appointing authority, for their posting to a position in the Management Cadre."

2. In rule 5, for the acronym and figure "BS-17", the acronym and figure "BS-18" shall be substituted.
3. In rule 6, for the acronym and figure "BS-17", the acronym and figure "BS-18" shall be substituted.
4. For Schedule-I, the following shall be substituted, namely:

Secretary
Health Department
Khyber Pakhtunkhwa

"SCHEME-E-II"
(see sub-rule (1) of rule 4)

| Sl No | Nomenclature of Post | Qualification for appointment by initial recruitment | Age limit | Method of appointment |
|-------|----------------------------|---|-------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1. | Members of service (BS-20) | <p>(a) MBBS/BDS or equivalent qualification, from any institute recognized by the Pakistan Medical Council; and</p> <p>(b) Doctorate/M.Phil in Public Health or Health Administration or Health Management or equivalent qualification from any recognized University; or Master in Public Health/Health Administration/Health Management, allied discipline or equivalent qualification from any recognized University with ten (10) years experience in the relevant field.</p> | | <p>(n) Eighty percent (80%) by promotion on the basis of selection on merit from amongst the members of service in BS-19 with five (5) years service as such or seventeen (17) years service in BS-17 and above;</p> <p>(h) four months advance in service training in management from recognized institution or Provincial Health Services Authority Khyber Pakhtunkhwa; and</p> <p>(c) twenty percent (20%) by initial recruitment.</p> |
| 2. | Member of Services (BS-19) | <p>(a) MBBS/BDS or equivalent qualification from any institute recognized by the Pakistan Medical Council; and</p> <p>(b) Doctorate/M.Phil in Public Health or Health Administration or Health Management or equivalent qualification from any recognized University or Master in Public Health/Health Administration/Health Management, allied discipline or equivalent qualification from any recognized University with five (5) years experience in the relevant field.</p> | 30-40 years | <p>(a) Eighty percent (80%) by promotion, on the basis of seniority cum-fitness, from amongst members of the Service in BS-18 having at least five (5) years service as such, with four months in service training in management from a recognized institution or the Provincial Health Services Academy; and</p> <p>(b) twenty percent (20%) by initial recruitment.</p> |
| 3. | Member of Service (BS-18) | <p>(a) MBBS/ BDS, or equivalent qualification, from any Institute recognized by the Pakistan Medical Council; and</p> <p>(b) Doctorate/S.Phil in Public Health or Health Administration or Health Management or equivalent qualification</p> | 25-32 years | By initial recruitment. |

| | | | |
|--|--|---|--|
| | | from any recognized University or Master in Public Health/Health Administration/ Health Management, allied discipline or equivalent qualification from any recognized University with two (2) years experience in the relevant field. | |
|--|--|---|--|

- 6. In Schedule-III, for the acronym and figure "BS-17", the acronym and figure "BS-18" shall be substituted.
- 7. In Schedule-IV, for the acronym and figure "BS-17", the acronym and figure "BS-18" shall be substituted.

**SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

ENDST: NO. & DATE EVEN

Copy forwarded to:-

- 1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 4. The Accountant General, Khyber Pakhtunkhwa.
- 5. Director General Health Services, Khyber Pakhtunkhwa.
- 6. Director General Provincial Health Services Academy, Khyber Pakhtunkhwa.
- 7. Chief Executive Officer, Health Care Commission, Peshawar.
- 8. All Hospital Medical Directors, MTs, Khyber Pakhtunkhwa.
- 9. Chief Executive, Saidu Group of Teaching Hospital, Swat.
- 10. Chief Executive, Bacha Khan Medical Complex, Swabi.
- 11. All Principal, Public Sector Medical College, Khyber Pakhtunkhwa.
- 12. Managing Director, Health Foundation, Khyber Pakhtunkhwa.
- 13. Secretary Pharmacy Council, Khyber Pakhtunkhwa.
- 14. Secretary Medical Faculty, Khyber Pakhtunkhwa.
- 15. Manager, Printing Press, Khyber Pakhtunkhwa, Peshawar.
- 16. All District Health Officers, Khyber Pakhtunkhwa.
- 17. All Section Officers, Health Department.
- 18. Deputy Director (IT), Health Department, Khyber Pakhtunkhwa to upload on the official website of Health Department.
- 19. PS to Minister for Health, Khyber Pakhtunkhwa.
- 20. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
- 21. PS to Secretary, Law Department, Khyber Pakhtunkhwa.
- 22. PS to Secretary Health, Khyber Pakhtunkhwa.
- 23. PSs to Special Secretary (E&A/B&D) Health Department, Khyber Pakhtunkhwa.
- 24. PAs to All Additional Secretaries in Health Department.
- 25. PAs to All Deputy Secretaries in Health Department.

(Signature)
11/02/2022

(FARHAT AYYUB)
SECTION OFFICER (E-V)

Health Department
Khyber Pakhtunkhwa

Annex = "13"

Annex "13"

FINAL SENIORITY LIST OF MEMBERS OF SERVICE (BPS-19) OF HEALTH DEPARTMENT 01/01/2021

| Sl. No. | Name of Officer/Official with academic qualification. | Date of Birth and Domicile. | Date of 1st entry into Govt. Service & BPS | Date of induction in the Management Cadre by Option /PSC & BPS | Regular appointment/promotion to the present post. | | | | Remarks |
|---------|---|-----------------------------|--|--|--|----------------|------------------------------------|--|---------|
| | | | | | Date of Promotion | BPS | Method of recruitment/ appointment | Present appointment with date. | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | |
| 1. | Dr. Shahzad Aji Khan s/o Muhammad Farid Swati, MBBS, MPH | 10.02.1966 Manselra | 09.12.1991 /BS-17 | By Option 14.07.2009/BS-17 | i) 10.09.2009. ii) 21.10.2013 | BS-18 BS-19 | By Promotion BY Promotion | MS KATH, Manselra. | |
| 2. | Dr. Mushtaq Ahmad s/o Aji Gohar Khan, MBBS, DHPM/MPH | 28.11.1964/ Abbottabad | 15.09.1997 /BS-17 | By Option 14.07.2009/BS-17 | 29.10.2013 09.11.2016 | BS-18 BS-19 | By Promotion By Promotion | DHO, Manselra. | |
| 3. | Dr. Shakirullah s/o. Syed Mashal Bacha, MD (Kabul), DHPM | 1.1.1964 / Mardan | 27.11.1998 /BS-17. | By Option 14.07.2009/BS-17 | 29.10.2013 22.02.2017 | BS-18 BS-19 | By Promotion By Promotion | MS Type-D Hospital, Toru Mardan. | |
| 4. | Dr. Muhammad Ehsun Waheed s/o Muhammad Hussain Khan Waheed, MBBS, MPH | 15.11.1965/ DI Khan | 27.11.1998 /BS-17 | By Option 14.07.2009/BS-17 | 29.10.2013 09.11.2016 | BS-18 BS-19 | By Promotion By Promotion | Principal PMTI DI Khan | |
| 5. | Dr. Shahzad-Faisal s/o Asimullah, MBBS, MPH | 16.3.1969/ Peshawar | 27.11.1998 /BS-17 | By Option 14.07.2009/BS-17 | 28.02.2017 01.10.2018 | BS-18 BS-19 | By Promotion By Promotion. | Hospital Director HMC, Peshawar | |
| 6. | Dr. Syed Nasir Shah S/O Syed Akhtar Shah, MBBS/DHPM/MPH | 01.10.1964/ Kohat | 27.11.1998 /BS-17 | By Option 14.07.2009/BS-17 | 14.11.2017 04.01.2019 | BS-18 BS-19 | By Promotion BY Promotion | MS DHQH, Batagram. | |
| 7. | Dr. Syed Jamal Akbar S/O Fazal Akbar, MBBS, MPH | Orakzai Agy/ 19-07-62 | 11.03.1999 /BS-17 | By Option 14.07.2009/BS-17 | 29.10.2013 26.09.2017 | BS-18 BS-19 | By Promotion By Promotion | PHSA | |
| 8. | Dr. Safia D/O Sultan Hussain Khan, MBBS, MPH | 09-07-1972/ Swat. | 16-08-1999 /BS-17 | By Option 14.07.2009/BS-17 | 29.10.2013 26.09.2017 | BS-18 BS-19 | By Promotion By Promotion | PHSA | |

Deputy Director (HSM),
Directorate General Health
Services K.P. Peshawar

DCB II

| S # | Seniority No. | Name of officer with qualification | Date of Birth | Date of 1st Entry into Govt Service | Date of Appointment / Promotion to BS-18 | Date of regular appointment / promotion to the present scale | Date of induction in Health Management Cadre | Whether fulfilled the prescribed length of service | Quantified score | Missing PERs if any | Disciplinary proceedings (if any) | Case (if any) in any court of law including NAB/Plea bargaining with NAB | Mandatory training for promotion | Research Paper | Remarks |
|-----|---------------|---|---------------|-------------------------------------|--|--|--|--|------------------|----------------------------|-----------------------------------|--|----------------------------------|----------------|--------------|
| 1 | 10 | Dr. Shahzad Ali Khan S/O Muhammad Farid Swati | 10.02.1966 | 09.12.1991 | 10.09.2009 | 21.10.2013 | 14.07.2009 | yes | 54.96 | 2021 | Yes | No | Yes | NA | Not Eligible |
| 2 | 31 | Dr. Mustaq Ahmad | 28.11.1964 | 15.09.1997 | 29.10.2013 | 31.08.2016 | 14.07.2009 | yes | 57.4 | | No | No | Yes | NA | Eligible |
| 3 | 32 | Dr. Shakirullah | 01.01.1964 | 27.11.1998 | 29.10.2013 | 22.02.2017 | 14.07.2009 | yes | | 2016 to 2021 | No | No | No | NA | Not Eligible |
| 4 | 33 | Dr. Muhammad Ehsan Walid | 15.11.1965 | 27.11.1998 | 29.10.2013 | 09.11.2016 | 14.07.2009 | yes | 55.77 | | No | No | Yes | NA | Eligible |
| 5 | 34 | Dr. Shahzad Faisal | 16.03.1969 | 27.11.1998 | 28.02.2017 | 01.10.2018 | 14.07.2009 | yes | | 2018 to 2021 | No | No | No | NA | Not Eligible |
| 6 | 35 | Dr. Syed Nasir Shah | 01.10.1964 | 27.11.1998 | 14.11.2017 | 04.01.2019 | 14.07.2009 | yes | 55.37 | | No | No | Yes | NA | Eligible |
| 7 | 36 | Dr. Syed Jamal Akbar | 19.07.1962 | 11.03.1999 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 54.51 | | No | No | Yes | NA | Eligible |
| 8 | 37 | Dr. Safia | 09.07.1972 | 16.08.1999 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 56.61 | | No | No | Yes | NA | Eligible |
| 9 | 38 | Dr. Muhammad Rehman Afridi | 23.03.1969 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 55.57 | | No | No | Yes | NA | Eligible |
| 10 | 39 | Dr. Jamal Abdul Nasir | 11.11.1955 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 56.78 | | No | No | Yes | NA | Eligible |
| 11 | 40 | Dr. Naeem Sial | 05.04.1970 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 54.1 | | No | No | Yes | NA | Eligible |
| 12 | 41 | Dr. Muhammad Shuaib Khan | 03.11.1969 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 55.85 | | No | No | Yes | NA | Eligible |
| 13 | 42 | Dr. Siraj Muhammad | 15.02.1968 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 61.1 | | No | No | Yes | NA | Eligible |
| 14 | 43 | Dr. Abdul Qaddus | 15.12.1969 | 16.09.2000 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 50.98 | | No | No | Yes | NA | Eligible |
| 15 | 44 | Dr. Ahmad Faisal | 16.10.1971 | 16.09.2000 | 28.02.2017 | 01.10.2018 | 14.07.2009 | yes | 56.53 | | No | No | Yes | NA | Eligible |
| 16 | 45 | Dr. Syed Muhammad Idrees | 08.02.1971 | 01.07.2001 | 29.10.2013 | 26.09.2017 | 14.07.2009 | yes | 56 | | No | No | Yes | NA | Eligible |
| 17 | 46 | Dr. Wali Khan | 30.03.1966 | 01.07.2001 | 22.09.2014 | 26.09.2017 | 14.07.2009 | yes | | 2001 to 2004, 2017 to 2021 | No | No | Yes | NA | Not Eligible |

ATTESTED

Certificates

- (1). Certificate that the officers included in the panel are eligible in all respect and possess that requisite length of service required for promotion. (Except S.No. 01,03,05 & 17)
- (2). Also certificate that no disciplinary action / proceeding or criminal charges in any court of law are pending against any of the officers included in the panel Except S.No.10 who is under enquiry proceedings as per report of the OGIS Khyber Pakhtunkhwa.

Deputy Director (HRM)
Directorate General Health
Services K.P. Peshawar

Section Officer (HRM)
Health Department
Khyber Pakhtunkhwa

Signature
Designation **Secretary Health**
Govt. of Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

ANNEX "C"
12

No. B:VI/FD/1-7/2019-20:Vol.VI

DATE: PESHAWAR THE 05-07-2022

To: The Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Subject: CREATION OF 05 POSTS IN THE DIRECTORATE GENERAL HEALTH SERVICES.

Dear Sir

I am directed to refer to your department's letter No. SOB/IIA/10/3-1/SHE/DOGS dated 05-07-2022 on the subject noted above to state that Finance Department agrees to the creation of following 05 No. of posts in respect of Directorate General Health Services Khyber Pakhtunkhwa & Directorate General of Provincial Services Academy during CFY 2022-23 subject to observance of all codal/legal formalities by the Administrative Department.

| S# | DDO | Name of Posts | BPS | No. of Posts |
|-------|---------|---|--------|--------------|
| 1 | PR-4309 | Additional Director General (Health Services) | BPS-20 | 01 |
| 2 | PR-4309 | Additional Director General (HRM Services) | BPS-20 | 01 |
| 3 | PR-4309 | Additional Director General (Admin) | BPS-20 | 01 |
| 4 | PR-4309 | Additional Director General (M&E) | BPS-20 | 01 |
| 5 | PR-5890 | Additional Director General (Admin PHSA) | BPS-20 | 01 |
| Total | | | | 05 |

2- The expenditure involved is debitable to the function/classification 07 Health & Health Administration 07G1 Administration 07G101 Administration during CFY 2022-23.

3- Audit Copy may be prepared and sent to this department for authentication

Yours faithfully,

BUDGET OFFICER-VI

Endst. No & Date Even

1. Director General Health Services Khyber Pakhtunkhwa
2. Director General Provincial Health Services Academy Khyber Pakhtunkhwa
3. Director FMIU Finance Department
4. PS to Secretary Finance Department
5. PA to SSE (B) Finance Department
6. PA to AFS (B-I) Finance Department
7. PA to DS (B-II) Finance Department
8. Master File

BUDGET OFFICER-VI

D. 13

Annex = 1-1-1
2-1-1

1

2-3

IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. /2022



1. **Dr. Syed Jamal Akbar**
Vice Principal, Post Graduate Paramedical Institute (PGPI)
Duran Pur, PHSA Peshawar
2. **Dr. Mushtaq Tanoli**
District Health Officer, Manshra
3. **Dr. Ehsan Waheed**
Principal, Paramedical Institute of Medical Technologies (PIMT)
Dera Ismail Khan
4. **Dr. Safia**
Director Training Provincial Health Services Academy (PHSA)
Duran Pur, Peshawar
5. **Dr. Jamal Abdul Nasir**
Director General Health Services Office, Peshawar

.....PETITIONERS

VERSUS

1. **Government of Khyber Pakhtunkhwa**
Through Chief Secretary (KP)
Civil Secretariat, Peshawar
2. **Secretary Health (KP)**
HRD Building, Khyber Road, Peshawar
3. **Director General Health (KP)**
Old Fata Secretariat, Warsak Road, Peshawar
4. **Secretary Eshtablishment**
Civil Secretariat, Peshawar

ATTESTED
EXAMINER
Peshawar High Court

.....RESPONDENTS

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

19



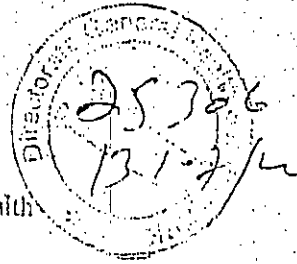
**PESHAWAR HIGH COURT PESHAWAR
ORDER SHEET**

| Date of Order or Proceedings | Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary |
|------------------------------|---|
| | 2 |
| 15.07.2022 | <p><u>Early Hearing No.178-P/2022 with CM in W.P. No.1719-P/2021</u></p> <p>Present: Muhammad Adnan Sher, Advocate for the applicants.</p> <p>*****</p> <p><u>LAL JAN KHATTAK, J:-</u> Through this application, the applicants seek withdrawal of their writ petition. Same is allowed and as a result the writ petition stands dismissed as withdrawn leaving the applicants at liberty to file afresh writ petition in accordance with law if their grievances are not redressed by the department concerned.</p> |

No. 4745/2
Date of Presentation of Application 18/8/2022
No of Pages 2/2
Copying fee 8/-
Total 8/-
Date of Preparation of Copy 19/8/2022
Date of Delivery of Copy 19/8/2022
Received By [Signature]

[Signature]
JUDGE
19 AUG 2022

15
Annex E
Dated: 13/07/2022



To

The Honorable Secretary Health
Department of Health
Khyber Pakhtunkhwa, Peshawar

THROUGH PROPER CHANNEL

Sub: REQUEST FOR PROMOTION ON CIRCULATION IN BPS 19 - 20 AS A
SPECIAL CASE MANAGEMENT CADRE HEALTH DEPARTMENT

Respected Sir,

In reference to the two appeals of the undersigned on the subject noted above before PSB vide DGHS office diary No: 8327, dated: 02/03/2022 (Annex A) and after the PSB in April 2022, vide DGHS office diary No: 18136, dated: 27.04.2022 (Annex B). It is humbly stated that the undersigned is a regular employee of Health Department in BPS-19, Management Cadre and has served Health Department for more than 26 years [Nov 1995 to March 1999 on contract and since March 20, 1999 onward on regular basis till date PSC KP (then NWFP)] in different positions and at different stations. The undersigned has been aggrieved after depriving from due promotion in the previous two PSBs held in April 06 to 08, 2022 and July 6, 2022 despite of the fact that the undersigned was eligible as per the seniority list of Management Cadre vide Notification No: SOH (E-V) Management Cadre BS19/2021, Dated: March 17, 2022 besides that undersigned is on the verge of retirement.

It is therefore humbly requested that the case of the undersigned shall be considered on priority basis so that the case shall be moved to the Secretary Health Khyber Pakhtunkhwa for promotion on circulation before the undersigned retirement.

Thanking you anticipation.

13-7-22

Dr. Syed Jamat Akhtar 13/07/2022
Member of Service (BS-19)
Health Management Cadre
Khyber Pakhtunkhwa

Copy to:

1. PA to Director General Health Services Khyber Pakhtunkhwa Peshawar
2. PA to Additional DGHS (HRM) Khyber Pakhtunkhwa Peshawar
3. PA to Additional DGHS (Admin) Khyber Pakhtunkhwa Peshawar

IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. /2022

1. Dr. Syed Jamal Akbar

Son of Fazal Akbar, Resident of House No. 175, Street 3, Sector N/2, Phase IV,
Hayatabad Peshawar

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa

Through Chief Secretary (KP)
Civil Secretariat, Peshawar

2. Secretary Health (KP)

HRD Building, Khyber Road, Peshawar

3. Director General Health (KP)

Old Fata Secretariat, Warsak Road, Peshawar

4. Secretary Establishment

Civil Secretariat, Peshawar

RESPONDENTS

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

Respectfully Sheweth;

1. That the petitioner is a law-abiding citizen of Pakistan and entitled to equal protection and enforcement of legal and fundamental rights so contained in the Constitution of 1973.
2. That the petitioner was Member of Service Health Management Cadre in the Health Department Khyber Pakhtunkhwa who served the Department on different positions for more than 26 years of exceptional and outstanding career.
3. That in the earlier course of litigation, the petitioner had challenged the *vires* of Management Cadre Service Rules, 2022 before this honorable court through W.P 1719-P/2022 wherein on the basis of discrimination and nepotism, he was left deprived of promotion being the most senior and eligible candidate by the

WP3220P2022 DR JAMAL AKBAR VS GOVT CF PG33

ATTESTED
EXAMINER
Peshawar High Court



16
Annex 'F'

15/12/22

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR.
 (JUDICIAL DEPARTMENT)
W.P.No.3220-P/2022

JUDGMENT

Date of hearing — 17.03.2023.
 Petitioner by — Mr. Muhammad Adnan Sher,
 Advocate.
 Respondents by — Syed Asif Jalal, AAG alongwith Dr.
 Konainan D.D. (DGHS) and Shah Baz
 Khan, Superintendent

=====



S M ATTIQUE SHAH, J:- Through this petition,
 filed under Article 199 of the Constitution of Islamic
 Republic of Pakistan, 1973, petitioner seeks the
 following relief:-

It is, therefore, respectfully prayed that on
 acceptance of instant writ petition, this
 hon'ble court may be pleased to:-

- a. Direct the respondent/respondents
 concerned to consider the case of the
 petitioner for Circular Promotion/
 Proforma Promotion in BPS-20 as a
 Special case and/ or
- b. Issue notification of promotion on
 circulation/proforma promotion in BPS-
 20 in accordance with law/rules with all
 attached benefits.
- c. Any other relief, deem fit and proper in
 the given circumstances of the case,
 may also be granted.

ATTESTED
EXAMINER
 Peshawar High Court

2. In essence the petitioner seeks direction against the respondents to consider the case of the petitioner for circular promotion/proforma promotion in (BPS-20).

3. Heard. Record perused.

4. The case of the petitioner is that despite being eligible the respondents have illegally deprived him from promotion in (BPS-20) while the contention of the respondents is that as the petitioner was at S.No.42 of the seniority list, while there were only 28 vacant posts in (BPS-20) and; promotions were accordingly made upto S.No.28, therefore, he was rightly not considered for the promotion being at S.No.42 of the seniority list so maintained therein.

5. Be that as it may, the case of the petitioner squarely falls within the ambit of terms and; conditions of his service and this court in view of bar of Article 212 of the Constitution cannot adjudicate upon the terms and conditions of a Civil Servant provided by Chapter-II of the Civil Servant Act, 1973. Section-2 (a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 explicitly provides that Civil Servant "means a person who is or

ATTESTED
EXAMINER
Responsible High Court

has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which clearly denotes that a person who is or has been a Civil Servant can approach the Service Tribunal for the redressal of his grievance arising out of the terms and conditions of his service. Moving towards the contention of the petitioner that at the time of his retirement five vacant posts in (BPS-20) were available and; therefore, he ought to have been promoted against one such post. In response to such contention, respondents produced Notification No.SOH (E-V)/4-4/Management Service Rules, 2008/ 2022 which shows that such posts were notified on 17.11.2022 much later than the retirement of the petitioner. Hence, keeping in view the peculiar facts and circumstances of the case in hand, we would refrain to discuss such aspect of the case, lest it may prejudice case of the parties before the proper forum and; also as the same is outside our jurisdiction under Article 199 of the Constitution.

6. In view thereof, instant petition is dismissed being not maintainable. However, the petitioner would be at liberty to approach the

ATTESTED
EXAMNER
Peshawar High Court

20

proper forum for the redressal of his grievance,
if so advised and permissible under the law.

Announced
17.03.2023


JUDGE


JUDGE

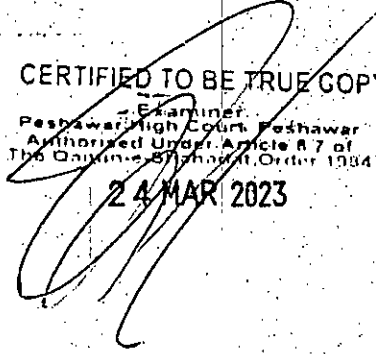
HON'BLE MR. JUSTICE S.M. ATTIQUE SHAH &
HON'BLE MR. JUSTICE SHAKEEL AHMAD

(Held as Court Secretary)

CERTIFIED TO BE TRUE COPY




Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan, Order 1984

24 MAR 2023



76041

Date of Presentation of Application 20/3/2023
No of Pages 11
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Date of Preparation of Copy 24/3/2023
Date of Delivery of Copy 24/3/2023
Received By Rooiullah

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| قیمت 50 روپے | 60809 |  |  |  |
| ایڈریٹ: محمد عدنان سنہا ریسٹورنٹ سائیڈ | | پشاور بار ایسوسی ایشن، خیبر پختونخواہ | | |
| بار کونسل ایسوسی ایشن نمبر: 09-2380 | | | | |
| رابطہ نمبر: 0331-0334321 | | | | |

بعدالت جناب: سر جسٹس

| | |
|-------------------|----------|
| مخایب: ڈائری جنرل | دعویٰ |
| ڈائری جنرل | علت نمبر |
| ڈائری جنرل | موضوع |
| ڈائری جنرل | جرم |
| ڈائری جنرل | تھانہ |

باعت تمیر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیرونی وجوہ دی کاروائی متعلقہ
 آن مقام کے لیے محمد عدنان سنہا ریسٹورنٹ سائیڈ کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زرین پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم بیرونی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و بیرونی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ بیرونی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

J. Akbar

18/4/2023
PESHAWAR BAR ASSOCIATION
KH. GORNAI

العواہ العواہ
مقام کے لیے منظور ہے

نوٹ: اس وکالت نامہ کی فونو کالی ناقابل قبول ہوگی۔