

1st Mar, 2023

Petitioner in person present. Mr. Muhammad Jan, District
Attorney for respondents present.

Counsel are on strike. The case is adjourned. To come up for
arguments on 10.05.2023 before D.B. PP given to the parties.



(Rozina Rehman)
Member (J)




(Kalim Arshad Khan)
Chairman

P

26.08.2022

Learned counsel for the petitioner present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.


Learned Member (Judicial) Mrs. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 24.10.2022 before the D.B.


(Salah-Ud-Din)
Member(J)

24th Oct., 2022

Lawyers are on strike today.

To come up for arguments on 01.12.2022 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.


(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

01st Dec. 2022

Counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

**SCANNED
KPST
Roshawar**

Learned counsel for the petitioner requested for adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 01.03.2023 before the D.B.

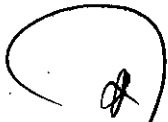

(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member(J)

28.07.2021

None for the petitioner and Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

Due to general strike of the Peshawar Bar Association, the case is adjourned to 15.12.2021 for the same before D.B.



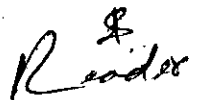
(Rozina Rehman)
Member (Judicial)



Chairman

15-12-21

DB is on Tour case to come up
For the same on Dated. 31-3-22


Reader

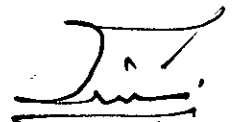
31.03.2022

Nemo for the Petitioner. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Previous date was changed on Reader Note, therefore, petitioner as well as his counsel be summoned through registered post and to come up for arguments on maintainability of present Review Petition before the D.B on 08.06.2022.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

8.6.22

paper D.B. is on Tour, therefore this case
is adjourned to 26.8.22 for same.




07.08.2020 Due to summer vacation case to come up for the same on
27.10.2020 before D.B.


Reader

27.10.2020 Junior to counsel for the appellant and Addl. AG for
the respondents present.

The Bar is observing general strike, therefore, the
matter is adjourned to 01.01.2021 for hearing before the
D.B.


(Atiq-ur-Rehman Wazir)
Member


Chairman

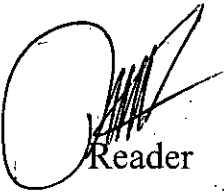
01.01.2021 Due to summer vacation, case is adjourned to
13.04.2021 for the same as before.


Reader

13.04.2021 Due to demise of Hon'able Chairman, the Tribunal is
defunct, therefore, the case is adjourned to 28.07.2021 for the
same.



Reader

29.10.2019 . Due to incomplete bench the case is adjourned. To come up for the same on 02.01.2020 before D.B.


Reader

02.01.2020 ~~None~~ present on behalf of the petitioner. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice be issued to petitioner and his counsel for attendance for 09.03.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

09.03.2020 Clerk to counsel for the petitioner and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the petitioner seeks adjournment as learned counsel for the petitioner is not available. Adjourn. To come up for further proceedings/arguments on 11 .05.2020 before D.B.


Member


Member

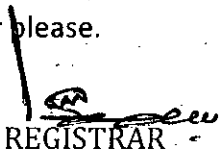



11.05.2020 Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 07.08.2020 before D.B.


Reader

FORM OF ORDER SHEET

Court of _____

Review Petition No. 348/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/09/2019	<p>The Review Petition submitted by Mr. Muhammad Riaz through Mr. Rehman Ullah Shah Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Review Petition be put up before D. Bench on <u>21.10.2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	01.10.2019	<p>Learned counsel for the petitioner present.</p> <p>Attention of the learned counsel for the petitioner was drawn to the proposition that power of review has not been conferred upon Khyber Pakhtunkhwa Service Tribunal as no such provision is available in the Khyber Pakhtunkhwa Service Tribunal Act 1974. Judgment of the Apex Court reported in 2004 PLC (C.S) page 527 was also brought into the notice of the learned counsel for the petitioner. Learned counsel for the petitioner seeks adjournment for arguments on maintainability of the present review petition. Adjourn. To come up for arguments on maintainability of the present review petition on 29.10.2019 before D.B.</p> <p style="text-align: center;">  Member  Member </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Review Petition No. 348/2019

Review No. /2019 in Appeal No. 1315/13

Muhammad Riaz S/O Allah Bakhsh

APPELLANT

VERSUS

Govt of KP through Secretary Health & Others

RESPONDENTS

INDEX OF DOCUMENTS

SNO	DOCUMENTS	ANNEXURE	PAGES
1.	Grounds of Review & Affidavit		01 - 05
2.	Copy of the Judgment	A	06 - 08
3.	Wakalatnama		

Appellant

Through.

Rehman Ullah Shah

MA, LL.M

Advocate

Ibn e Abdullah Law Associates

11 Azam Tower University Road, Peshawar

Phone & Fax # 091- 570 2021

infoila56@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Review Petition no. 348/2019

Review No...../2019 in Appeal No. 1315/13



Muhammad Riaz S/O Allah Bakhsh

APPELLANT

VERSUS

Govt of KP through Secretary Health & Others

RESPONDENTS

REVIEW PETITION ON BEHALF OF PROFERMA RESPONDENTS 6 -9, IN THE ABOVE TITLED CASE UNDER THE ENABLING LAWS FOR REVIEW OF THE JUDGEMENT DATED 26/03/2019 IN SERVICE APPEAL 1315/2013 BY THIS HON'BLE TRIBUNAL WHERE THE PRAYER IN APPEAL IS ACCEPTED WITHOUT HEARING RESPONDENTS 6-9, AND HAVE BEEN CONDEMNED UNHEARD.

PRAYER IN REVIEW.

On acceptance of this Review, the order/ judgment to the extent of Respondents 6-9 may very graciously be set aside in the best interest of justice.

Review is within time from the date of Service of the decision, and Hon'ble Tribunal has the jurisdiction to review its decision in light of judgment reported in 2006 SCMR 1630, 2015 SCMR 821.

Respectfully submitted as under:

1. Respondents namely, Sahib Jamal, Qader Khan, Naeem Ullah Jan, and Khan Bahadar, all posted as Sr. Clerks posted at various Nursing Institutes under PHSA were arrayed as proforma Respondents in the above appeal. It is worth to mention that the Hon'ble Tribunal did not summon them to defend their position, and hence were condemned unheard, whereby the

order of Promotion of the contesting Respondent No 5 along with the present Petitioner has been set aside.

{Copy of the Judgment is annexed as "A"}

- 2. Based on the principles as enumerated in 2015 SCMR 821, this Hon'ble Tribunal has jurisdiction to Review its decision as Petitioners have been condemned unheard.
- 3. Based on the Principle of Audi Alterm Partum, and having various other rights, the Petitioners seek Review of the Referred Judgement on the following amongst other grounds inter-alias.

GROUND OF REVIEW.

- A. That the main issue before the Hon'ble Tribunal was promotion of Muhammad Riaz, and his case was based on discrimination as Respondent No. 5 in the said appeal was the contesting one, and not the Applicants. They have not been afforded with the opportunity of being heard. It has recently been reported in 2019 MLD 429 Lah; that *Philosophy of finality attached to a judgment was the paramount consideration with the aim to put an end to litigation and review was merely an exception to the said principle---*Review jurisdiction could only be invoked if the error of fact or law was certain, evident, patent and apparent on the face of record, which should not require any elaborate probe to prove its correctness, otherwise it would be a case of appeal. In light of the referred citation, the judgment of the Hon'ble Tribunal is against the fact and circumstances of the case to the extent of Applicants, hence liable to be reviewed and set aside in the best interest of justice.
- B. That Applicants are promoted in accordance with Law on its own turn, and has no concern with the matter of the Petitioner and that of Respondent No. 5. Hence they have been penalized for no reasons. Hence the decision to the extent of applicants is not in accordance with the law as valuable rights of the present applicants have been violated, and the Representative of the Department has mis-guided the Hon'ble Tribunal.
- C. That legally, no order by any authority, whether judicial or quasis-judicial, can be made to the detriment of anyone unless and until he is given the

right of hearing. Any such order would offend against the universally established principle of *Auti Alterm Partem*.

- D. That the principle of Natural Justice has consistently been approved by the superior courts and even by this Hon'ble Court and it has been followed to the extent that it shall be read as an integral part of the Law even it does not find mention in a particular enactment.
- E. It has also recently been reported in 2019 PLD 111 Lhr that "S. 114 & O. XLVII, R. 1, review ---Scope---Although "review" had a very limited scope but the same did not mean abdication of the power of review in an omnibus fashion---Intent of Legislature while incorporating the power of review was that no error in the judgment/order which was so manifestly floating on the surface should be allowed to perpetuate.
- F. It has been reported in 2017 PLD 65 QUETTA; that Power of Court to review its own judgment/ order was only discretionary---Reason for conferring discretionary power of review on a court was to prevent injustice being done. In the instant case, the Hon'ble Tribunal has been mis-guided by the official Representative, and Respondents 1-4. Hence liable to be reviewed so that innocent employee may not be penalized.
- G. That the matter in hand is decided in hasty manner, Applicants have not been afforded with the opportunity of proper and regular hearing. The Law does not permit one would be condemned unheard.
- H. That with the permission of this Hon'ble Tribunal, further grounds may be raised when the stance of the respondents comes in black and white. The Review is within time from the date of knowledge i.e. August 21, 2019.

PRAYER

It is therefore, most humbly prayed that on acceptance of the instant Review, this Hon'ble Tribunal may very graciously be pleased to set aside the Order and Judgment 26/03/2019 in service appeal 1315/2013 to the extent of applicants/ performa Respondents 6-9 may very graciously be set aside.

Any relief which this Hon'ble Tribunal deems appropriate in law, equity may also be granted.

4

INTERM RELIEF.

By way of interm relief, operation of the referred Judgment to the extent of Respondents 6-9 in the referred appeal may kindly be suspended.

Appellant

Through.



Rehman Ullah Shah

M.A. LL.M

Advocate

Ibn e Abdullah Law Associates

11 Azam Tower University Road, Peshawar

Phone & Fax # 091- 570 2021

infoila56@gmail.com

(5)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

Review No...../2019 in Appeal No. 1315/13

Muhammad Riaz S/O Allah Bakhsh

APPELLANT

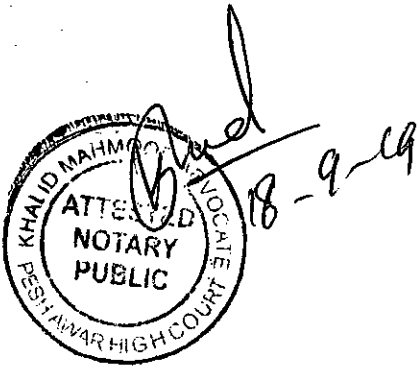
VERSUS

Govt of KP through Secretary Health & Others

RESPONDENTS

AFFIDAVIT

I, Khan Bahadar, Sr Clerk, School of Nursing, Lady Reading Hospital, Peshawar (one of the applicants), do hereby solemnly affirm and declare on oath that the contents of the accompanying Review are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



Deponent

Khan Bahadar

17201-5363862-7

(6)

"A"
Annex 8

270/c

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

Appeal No. 1315/2013

Date of Institution ... 23.08.2013

Date of Decision ... 26.03.2019



Muhammad Riaz S/o Allah Bakhsh NQ/Chowkidar of Public Health School,
D.I.Khan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar and four
others. ... (Respondents)

MR. SAREE-UL-EHSAN BALOCH,
Advocate --- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney --- For respondents

MR. MUHAMMAD ABDULLAH BALOCH,
Advocate --- For respondent no.5

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI --- MEMBER(Executive)
CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that he was appointed as
Chowkidar/Naib Qasid (BPS-01) in the respondent-department on 06.10.1990. He
passed F.A examination in 1989. On the other hand private respondent no.5 joined
government service on 28.06.1994. Respondent no.3 vide impugned order dated
09.05.2013 promoted private respondents to the post of Junior Clerk, despite being
junior to the appellant. To safeguard his service interests, he filed departmental
appeal, which remained unanswered, hence, the present service appeal. He further

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

added that in the seniority list circulated by the respondents in 2011 his name was reflected at sr. no.3. Action on the part of the respondents patently illegal and unlawful. The appellant is at the last leg of his career and deserved to be promoted as Junior Clerk.

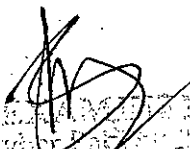
3. Learned counsel for private respondent no.5 argued that the appellant failed to challenge the seniority list of Naib Qasids issued by the respondents in 2007. Promotion of his client was made on the directions of Peshawar High Court, Peshawar. Despite knowledge he failed to join the proceedings before the Peshawar High Court, Peshawar. Moreover, he was transferred to District T.B Control Office, D.I.Khan vide order dated 21.05.1997 and remained there till March, 2000. He was absorbed in the T.B Control Program. As such he was not entitled for promotion to the post of Junior Clerk.

4. Learned Deputy District Attorney relied on arguments advanced by the learned counsel for private respondent no.5.

CONCLUSION.

5. In the present service appeal, it is not disputed that he was appointed as Chowkidar/Naib Qasid on 06.10.1990 and cleared F.A in 1989. In the seniority list notified in 2011 and 2017 his name was reflected at sr. no.3. On the other hand official respondents promoted private respondent no.5 vide impugned order dated 09.05.2013, despite being junior to the appellant. In the interest of justice and fair play, it is pertinent to point out that the private respondent joined service on 21.06.1999 and was matric. The respondents are taking shelter under a judgment of Peshawar High Court Peshawar passed in writ petition no. 1713/2011 and

ATTESTED


Attesting Officer
Service Tribunal

8

27/11

3751/2010 decided on 16.05.2013. It is quite strange that the appellant was not made a party in the litigation referred to above. Therefore, no adverse order could be passed against him. Stance taken by the respondents about his transfer to the District T.B Control Program vide order dated 21.05.1997 was also flimsy and irrational. He was simply transferred to the said office and again joined his parent department in March, 2000. Had he been absorbed in the T.B Control Program then was there any justification to allow him to join their parent organization? The present case clearly manifests that promotion as Junior Clerk was denied to the appellant despite his eligibility. Having rendered eighteen years service, he is running from the pillar to post to get one step promotion. It speaks of high handedness, arbitrary decision making on the part of respondents and bypassing rules to favour their blue eyed employees. Discriminatory treatment received by the appellant at the hands of respondents is sheer violation of Article-25 of the Constitution.

6. Foregoing in view, the appeal is accepted, impugned order dated 09.05.2013 is set aside. The respondents are directed to give promotion to the appellant from the due date. Parties are left to bear their own costs. File be consigned to the record room.



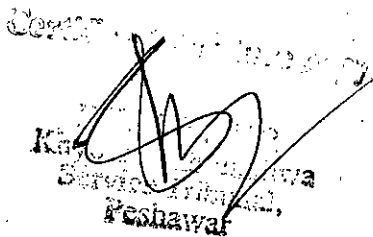
(HAMID FAROOQ DURRANI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

ANNOUNCED
26.03.2019.

Center
K...
Service...
Peshawar



قیمت 50 روپے	25223			
ایڈوکیٹ: Rehman Ullah Shah		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
BC بار کونسل/ ایسوسی ایشن نمبر: 10-0541				
رابطہ نمبر: 0333 549394 8				

بعدالت جناب: سردس تریتونل KPK سٹیشن

Applicants	منجانب:	Review	دعوی:
Muhammad Riaz		in Appeal 13/5/2013	علت نمبر:
بنام		decide on 26/3/2019	مورخہ:
The Govt of KP & other			م:م:
			تھانہ:

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

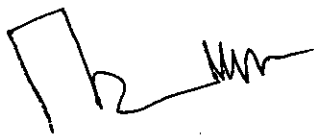
آن مقام Peshawar کیلئے Rehman Ullah Shah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی 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 سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

_____ مقام Peshawar کے لیے منظور ہے۔

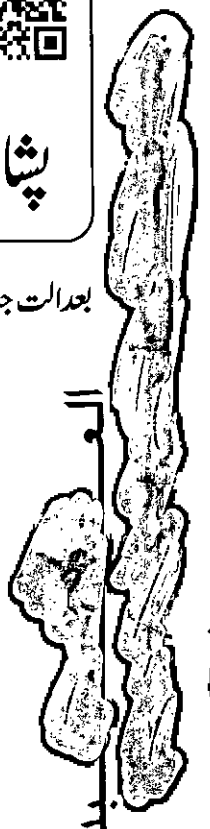
نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Attested
Accepted



Rehman Ullah Shah
Advocate

Sahub Javed
CNIC No: 17301-3608931-1
Gader Khan
CNIC No: 17301-1287819-8



Muhammad Jah
CNIC No: 17301-1061101-7
Khan Bahadar
CNIC 17301-5363862-7

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

In Service Appeal No. 1315 of 2013

Muhammad Riaz
VS.
Govt. of KPK etc.

**REJOINDER ON BEHALF OF APPELLANT IN RESPECT OF
WRITTEN REPLY SUBMITTED BY RESPONDENT NO. 5.**

Para-wise reply on behalf of appellant are as under:

PRELIMINARY OBJECTIONS:

- a. That the para no. a is incorrect, the appellant has got the cause of action and locus standi.
- b. That the para no. b is incorrect, the appeal of the appellant is well within time.
- c. That the para no. c is incorrect, the appeal of the appellant is well within time.
- d. That the para no. d is incorrect, the departmental record and previous seniority list clearly shows that the appellant is senior than the respondent No. 5.
- e. That the para no. e is incorrect.
- f. That the para no. f is incorrect and misconceived.
- g. That the para no. g is incorrect.
- h. That the para no. h is incorrect.
- i. That the para no. i is misconceived and not related to appellant.

PARAWISE REPLY TO THE FACTS:

- 1. That the para no. 1 needs no reply.
- 2. That the para no. 1 needs no reply.
- 3. That the para no. 1 needs no reply.

- 4. That the respondent No. 5 was not entitled for promotion before the appellant. The record clearly suggested that the appellant is senior than the respondent No. 5 and also possessed higher qualification than the respondent No. 5. Hence, the promotion order of the respondent No. 5 is liable to be cancelled. Therefore, the para No. 4 of reply is not correct.
- 5. That the para No. 5 of reply is totally misconceived. In the year 2011, Final Seniority List of Class-IV in PHSA & its network was issued, wherein, the appellant placed at serial No. 3 while the respondent No. 5 was placed at serial No. 7. Thus, it is very much clear that the appellant was placed senior than the respondent No. 5 in the final seniority list of the year 2011. But later-on the official respondents ignored the same and wrongly promoted the respondent No. 5 instead of appellant.
- 6. That the para No. 6 is not correct and misconcieved, hence denied.

PARAWISE REPLY TO THE GROUNDS:

- 1. That the para no. 1 is incorrect, hence denied. The final seniority list of 2011 supported the appellant's version.
- 2. That the para no. 2 needs no reply.
- 3. That the para No. 3 is not correct.
- 4. That the para No. 4 is not correct. The appellant approached the proper forum.
- 5. That the para No. 5 needs no reply.

It is therefore, humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Your Humble Appellant



Muhammad Riaz
Through Counsel

Dated. 21/2/2017

Muhammad Waheed Anjum
Advocate Supreme Court.

(195)

WORKING PAPER.

Sub: FOR PROMOTION TO THE POST OF JUNIOR CLERK (BPS-07).

1. 10 posts of Junior Clerks (BPS-07) are lying vacant in PHSA and its allied Institutes in Khyber Pakhtunkhwa as per the following details.

1. P.H.S.A Office Peshawar.	01 post.
2. School of Nursing at LRH Peshawar.	01 post.
3. Public Health School D.I.Khan.	01 post.
4. School of Nursing D.I.Khan.	01 post.
5. School of Nursing Mardan.	01 post.
6. School of Nursing, Kohat.	01 post.
7. School of Nursing, Bannu.	01 post.
8. PIMT Swat.	03 posts.

2. According to the seniority list of Naib Qasid (BPS-01) of sub-cadre of Provincial Health Services Academy Deptt: of Health Khyber Pakhtunkhwa, Peshawar & court directives as well as senior most Naib Qasid (BPS-01) are due to promoted to the post of Junior Clerk (BPS-07) in light of the relevant rules prescribed for promotion from Naib Qasid to Junior Clerk (BPS-07) attached as annexure - A.

3. In term of S.No. 01 column No.05 Govt: of Khyber Pakhtunkhwa Establishment & Administration Department Notification No. SOE-III(E&D)1-8/2008 dated. 4th February, 2009 33% of the vacant posts (BPS-07) will be filled on seniority/fitness basis as annexure (B). the post of Junior Clerk (BPS-07) is required to be filled as under:-

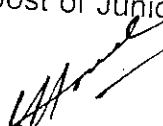
<u>S.#.</u>	<u>NAME OF OFFICIALS.</u>	<u>PLACE OF POSTING.</u>	<u>REMARKS.</u>
1.	Mr. Sahib Jamal N/Qasid.	PGCN Hayatabad Peshawar.	Documents completed & fit for promotion.
2	Mr. Yasir Habib N/Qasid	PHS D.I.Khan	Documents completed & fit for promotion.
3.	Mr. Qadir khan N. Qasid	PHSA Peshawar	Documents completed & fit for promotion.
4.	Mr. Naeem Ullah Jan N/Qasid.	PHSA Peshawar.	Documents completed & fit for promotion.
5.	Mr. Khan Bahader N/Qasid.	PHS Nishterabad Peshawar.	Documents completed & fit for promotion as well as court directives.

ACRs of the above official are placed at annexure (C).

5. It is certified that the official concerned proposed for promotion as Junior Clerk (BPS-07).

- Have the lower post on regular basis.
- Have the prescribed minimum length of qualifying service as required under the recruitment rules.
- According to the report of their Controlling Officer, neither any disciplinary/departmental proceeding nor anti-corruption cases are pending against them.
- The Provisional/Final Seniority list have already been circulated amongst them.

The Departmental Promotion committee is requested to determine the suitability of Junior Clerk (BPS-07) for promotion on regular & acting charge basis, because of exigency of services to the post of Junior Clerk (BPS-07).


DIRECTOR,
PHSA, PESHAWAR.

Attended
18
[Signature]

69/1
 3
[Signature]

OFFICE ORDER

Annex - IV

Consent upon the recommendation of Departmental Promotion Committee held on 06/05/2013 under the Chairmanship of Director PHSA Health Deptt: Khyber Pakhtunkhwa Peshawar the following Class-IV staff (Naib Qasid) (BPS-01) are hereby promoted to Junior Clerk (BPS-07) with immediate effect in the best interest of public services and posted as follows against each.

S.N.	NAME OF OFFICIALS.	FROM.	TO.	REMARKS.
1.	Mr. Saib Jamal	PCCN Hayatabad.	PHSA Peshawar	Adjusted against vacant post.
2.	Mr. Yasir Habib.	PHS D.I.Khan.	PHS D.I.Khan	Adjusted against vacant post.
3.	Mr. Qasim Khan.	PHSA	School of Nursing KTH Peshawar.	Adjusted against vacant post.
4.	Mr. Naqam Ullah Jan.	PHSA.	PCCN Hayatabad.	Adjusted against vacant post subject to the withdrawal of the case of decision of court.
5.	Mr. Raza Bahader.	PHSA.	School of Nursing, LRH Peshawar	

Note: Mr. Fasih Khan Junior Clerk (BPS-07) School of Nursing KTH Peshawar is hereby repatriated to Director General Health Services Khyber Pakhtunkhwa.

301-130
 DIRECTOR,
 PHSA, PESHAWAR.
 Date: 07/05/2013
[Signature]
 Director
 Director

301-130
 13/30/0-28

No. 1-25/PHS-Admin/Promotion/2012/13/30/0-28
 Copy forwarded to

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa
3. Deputy Director, (M) PHSA Peshawar
4. Deputy Director, (HRD) PHSA Peshawar.
5. Course Director, PHSA Peshawar.
6. Principal, Public Health School DIKhan.
7. Principal, Post Graduate College of Nursing, Hayatabad Peshawar.
8. Vice Principal, School of Nursing, LRH, KTH, Peshawar.
9. Accounts Officer, PHSA Peshawar.
10. District Comptroller of Accounts DIKhan.
11. P.S to Secretary Health Khyber Pakhtunkhwa Peshawar
12. Administrative Officer, PHSA Peshawar.
13. All concerned officials.

[Signature]
 DIRECTOR

7

278/C

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

Appeal No. 1315/2013

Date of Institution ... 23.08.2013

Date of Decision ... 26.03.2019



Muhammad Riaz S/o Allah Bakhsh NQ/Chowkidar of Public Health School,
D.I.Khan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar and four
others. ... (Respondents)

MR. SAREE-UL-EHSAN BALOCH,
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney

--- For respondents

MR. MUHAMMAD ABDULLAH BALOCH,
Advocate

--- For respondent no.5

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that he was appointed as
Chowkidar/Naib Qasid (BPS-01) in the respondent-department on 06.10.1990. He
passed F.A examination in 1989. On the other hand private respondent no.5 joined
government service on 28.06.1994. Respondent no.3 vide impugned order dated
09.05.2013 promoted private respondents to the post of Junior Clerk, despite being
junior to the appellant. To safeguard his service interests, he filed departmental
appeal, which remained unanswered, hence, the present service appeal. He further

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

27/11/17

added that in the seniority list circulated by the respondents in 2011 his name was reflected at sr. no.3. Action on the part of the respondents patently illegal and unlawful. The appellant is at the last leg of his career and deserved to be promoted as Junior Clerk.

3. Learned counsel for private respondent no.5 argued that the appellant failed to challenge the seniority list of Naib Qasids issued by the respondents in 2007. Promotion of his client was made on the directions of Peshawar High Court, Peshawar. Despite knowledge he failed to join the proceedings before the Peshawar High Court, Peshawar. Moreover, he was transferred to District T.B Control Office, D.I.Khan vide order dated 21.05.1997 and remained there till March, 2000. He was absorbed in the T.B. Control Program. As such he was not entitled for promotion to the post of Junior Clerk.

4. Learned Deputy District Attorney relied on arguments advanced by the learned counsel for private respondent no.5.

CONCLUSION.

5. In the present service appeal, it is not disputed that he was appointed as Chowkidar/Naib Qasid on 06.10.1990 and cleared F.A in 1989. In the seniority list notified in 2011 and 2017 his name was reflected at sr. no.3. On the other hand official respondents promoted private respondent no.5 vide impugned order dated 09.05.2013, despite being junior to the appellant. In the interest of justice and fair play, it is pertinent to point out that the private respondent joined service on 21.06.1999 and was matric. The respondents are taking shelter under a judgment of Peshawar High Court Peshawar passed in writ petition no. 1713/2011 and

ATTESTED



27/10

3751/2010 decided on 16.05.2013. It is quite strange that the appellant was not made a party in the litigation referred to above. Therefore, no adverse order could be passed against him. Stance taken by the respondents about his transfer to the District T.B Control Program vide order dated 21.05.1997 was also flimsy and irrational. He was simply transferred to the said office and again joined his parent department in March, 2000. Had he been absorbed in the T.B Control Program then was there any justification to allow him to join their parent organization? The present case clearly manifests that promotion as Junior Clerk was denied to the appellant despite his eligibility. Having rendered eighteen years service, he is running from the pillar to post to get one step promotion. It speaks of high handedness, arbitrary decision making on the part of respondents and bypassing rules to favour their blue eyed employees. Discriminatory treatment received by the appellant at the hands of respondents is sheer violation of Article-25 of the Constitution.

6. Foregoing in view, the appeal is accepted, impugned order dated 09.05.2013 is set aside. The respondents are directed to give promotion to the appellant from the due date. Parties are left to bear their own costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)
CHAIRMAN

(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

ANNOUNCED
26.03.2019

Copy to the file copy
Khan
Peshawar

(2)

BEFORE THE HONOURABLE (K.P.K) SERVICE TRIBUNAL, PESHAWAR.

STA No. _____/2013.

Muhammad Riaz son of Allah Bakhsh,
NQ/Chowkidar of Public Health School,
D.I.Khan.

APPELLANT.

VERSUS.

1-Govt: of Khyber Pakhtoonkhawa through
the Secretary Health, Peshawar.

2-Director General Health. *Peshawar*

3-Director *Principal* Health Services
Academy Budhni Road, Peshawar.

4-The Principal Public Health School, DIKhan.

5-Yasir Habib, Junior Clerk(BPS-7)
(Under Objection)Public Health School,
D.I.Khan.

RESPONDENTS.

(Further)Representation against the Order
Dated.09-05-2013 bearing No.F28PHSA/Admn/
Promotion 2012-13-3010-28 of the Respondent
No.3 vide which the Respondent No.5 has been
unduly favoured with Promotion from the
Post of Naib Qasid BPS(1) to the post of
Junior Clerk BPS(07), thereby giving undue
benefit to Respondent No.5 and ^{Co}extensive
representation against the act of omission of
the Respondent No.3 by withholding the first
representation and non-transmission of the same
vide his Memo No:3664 dated 10-06-2013.

Page 2.

PRAYER:- On acceptance of the Appeal, the impugned Order dated 09-05-2013 of the Respondent No.3 may be set aside and under the Rule of Seniority-cum-fitness, the Appellant being eligible for the Promotion may kindly be favoured with Promotion to the rank of Junior Clerk BPS(07) with attendant benefits.

The Appellant; amongst other grounds respectfully submits as under:-

- 1- The Appellant was appointed as Naib Qasid(BPS-01) since 6-10-1990. copy of the appointment order is enclosed as Annexure-I.
- 2- The Appellant has a clean Service record.
- 3- The Appellant is F.A. since 1989. copy of the Certificate is enclosed as Annexure-II.
- 4- The Respondent was appointed since 28-4-1974. copy enclosed as Annexure-III.
- 5- The Respondent No.3 made Order of Promotion of the Junior Naib Qasid BPS(01) Respondent No.5 on 09-05-2013 and the Seniority list is undisputed. Copy of the Impugned Order is Annexure-IV. Seniority list is Annexure-V.
- 6- The Respondent No.5 has been unduly pushed ahead and such act of the Respondents No.3 & 4 has caused grievance to the Appellant, hence the instant Appeal; which is competent in its present form, Copy of Appeal is Annexure-VI.

4

GROUNDS:

- i) The Rule of Seniority-cum-fitness has been disregarded.
- ii) ^{no} There is complaint of unsatisfactory performance of the Appellant.
- iii) The Seniority in service coupled with higher qualification (FA) of the Appellant has been *overlooked*.
- iv) The Respondent No.5 is Matric and his lower qualification had escaped the notice of the Respondent No.3 & 4 which omission is an act of undue favouritism to the Respondent No.5.
- v) The Appellant's counsel may be permitted to add further grounds afterwards.

It is therefore PRAYED that the instant Appeal may be accepted.

YOUR HUMBLE APPELLANT,

J. Riaz
(MUHAMMAD RIAZ).

Dated: _____

VERIFICATION.

It is solemnly affirmed that the contents of the Appeal are true and correct to the best of my knowledge and belief, and the Appeal is within time since the date of nondispatching of the Departmental Appeal on 10.6.2013.

J. Riaz
APPELLANT.

228/c

Amended Appeal

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP AT D.I.KHAN.**

Service Appeal No. _____ of 2013

Muhammad Riaz son of Allah Bakhsh, Naib Qasid/Chowkidar of Public Health School D.I.Khan.

Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Health Department, Peshawar.
2. Director General Health Services, Peshawar.
3. Director, Provincial Health Services Academy, Budhni Road, Peshawar
4. Principal, Public Health School, D.I.Khan.
5. Yasir Habib, Junior Clerk (under Objection), Public Health School, D.I.Khan.
6. Sahib Jamal Junior Clerk, Provincial Health Services Academy, Peshawar.
7. Qader Khan Junior Clerk, School of Nursing, Khyber Teaching Hospital, Peshawar.
8. Naeem Ullah Jan, Junior Clerk, Post Graduate College of Nursing, Hayatabad, Peshawar.
9. Khan Bahadar, Junior Clerk, School of Nursing, Lady Reading Hospital, Peshawar.

No.6 to 9, arrayed on the directions of this Honourable Tribunal, and they are care of respondent No.3

Respondents

APPEAL UNDER SECTION 4 OF THE K.P.K. SERVICE TRIBUNALS ACT, 1974, (FURTHER) REPRESENTATION AGAINST THE ORDER DATED 09.05.2013 BEARING No.F28 PHSA/ADMN/ PROMOTION 2012-13-3010-28 OF THE RESPONDENT NO.3 VIDE WHICH THE RESPONDENT NO.5 HAS BEEN UNDULY FAVOURED WITH PROMOTION FROM THE POST OF NAIB QASID BPS-1 TO THE POST OF JUNIOR CLERK BPS-7, THEREBY GIVING UNDUE BENEFIT TO RESPONDENT No.5 AND COEXTENSIVE REPRESENTATION AGAINST THE ACT OF OMISSION OF THE RESPONDENT No.3 WITHHOLDING THE FIRST

229/c

REPRESENTATION AND NON-TRANSMISSION OF THE SAME
VIDE HIS MEMO No.3664 DATED 10.06.2013.

PRAYER:

ON ACCEPTANCE OF THE APPEAL, THE IMPUGNED ORDER DATED 09.05.2013 OF THE RESPONDENT No.3 MAY BE SET ASIDE AND UNDER THE RULE OF SENIORITY-CUM-FITNESS, THE APPELLANT BEING ELIGIBLE FOR THE PROMOTION MAY KINDLY BE FAVOURED WITH PROMOTION TO THE RANK OF JUNIOR CLERK BPS-7 WITH ATTENDANT BENEFITS.

The appellant, amongst other grounds, respectfully submits as under:

1. That appellant was appointed as Naib Qasid BPS-01 since 06.10.1990. Copy of the appointment order is enclosed as Annexure -I.
2. The appellant has a clean service record.
3. The appellant is F.A. since 1989. Copy of the certificate is enclosed as Annexure -II.
4. The respondent was appointed since 28.06.1994.
5. The respondent No.3 made order of promotion of the Junior Naib Qasid BPS-1/Respondent No.5 on 09.05.2013 and the Seniority List is undisputed. Copy of the Seniority List is Annexure-III and the impugned order is enclosed as Annexure-IV.
6. The respondent No.5 has been unduly pushed ahead and such act of the Respondents No.3 & 4 has caused grievance to the appellant, hence, the instant appeal, which is competent in its present form. Copy of the Departmental Appeal is Annexure-V.
7. That in compliance of the directions of this Honourable Tribunal, the respondents No.6 to 9 have been arrayed as respondents and therefore, this amended appeal is being filed.

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GROUND:

- i. The rule of Seniority-cum-Fitness has been disregarded.
- ii. There is no complaint of unsatisfactory performance of the appellant.
- iii. The Seniority in service coupled with higher qualification (FA) of the appellant has been overlooked.
- iv. The respondent No.5 is matric and his lower qualification had escaped the notice of the Respondent No.3 & 4 which omission is an act of undue favouritism to the respondent No.5.
- v. The appellant's counsel may be permitted to add further grounds afterwards.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted.

Yours Humble Appellant

[Signature]
 (Muhammad Riaz)
 Through Counsel

[Signature]
 27/1/2018

Dr. 22nd January, 2018

[Signature]
Dil Awaiz Baloch
 Advocates High Court, D.I.Khan.

Saree-ul-Ehsan Baloch
 Advocates High Court, D.I.Khan.

VERIFICATION: It is solemnly affirmed that the contents of the appeal are true and correct to the best of my knowledge and belief and the appeal is within time since the date of non-dispatching of the Departmental appeal on 10.06.2013; and also that this amended appeal is being filed on the directions of this Honourable Tribunal.

AFFIDAVIT: I, the Appellant, do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge and belief and nothing has been deliberately concealed from this Honourable Court.

Appellant

[Signature]

Deponent

[Signature]

Attested

(9)

Annex - I

23/11

P(4)

REGIONAL HEALTH DIRECTORATE, DERA ISMAIL KHAN.

OFFICE ORDER.

As decided by the Minister for Health, SW & PW Department, NWFP, in his D.O. Letter No. 21 (SE) No. dated 4.10.1990, & the approval accorded by the Departmental Selection Committee Mr. Muhammad Riaz S/O Allah Bakhsh Moh: Wangrigaran wala, D.I. Khan city is hereby appointed as Chowkidar in B.P. No. 1, plus usual allowances as admissible under the rules, sanctioned by the Govt: from time to time, for the post offered to him.

His appointment will be subject to the following terms and conditions:-

The post which is offered to him is sanctioned on temporary basis but is likely to continue on year to year basis.

His appointment is purely on temporary basis and is liable to be terminated at any time without any reason being assigned.

That he is domiciled in D.I. Khan Division, N.W.F.P.

If he wishes to resign at any time, he will resign in writing by giving a prior notice of one month and will continue to serve the Govt: till the resignation is accepted by the competent authority and communicated to him in writing.

He will be governed by such rules and orders relating to Pay, T.A., Leave Rules and Medl: Attendance Rules etc as are issued by the Govt: for the category of Govt: servants he belongs.

His appointment will be subject to the Medl: fitness, Satisfactory Character report and production of Domicile Certificate of N.W.F. Province.

If he accept the offer on the above mentioned terms and conditions, he should report for duty to the:-

The Principal, F.H. Tachi School, D.I. Khan against newly created post, within one week, from the date of receipt of this offer, failing which the offer will be considered as cancelled.

Sd/-

Divl: By: Director Health Services, D.I. Khan Division, D.I. Khan

1001 X 10 92

No. 4507-10/E-C, Dated

Copy forwarded to:-

- Mr. Muhammad Riaz S/O Allah Bakhsh, Moh: Wangrigaran wala, D.I. Khan,
- Principal, F.H. T. School, D.I. Khan,
- Private Secretary to Minister for Health, SW & PW Deptt: NWFP, Peshawar,
- Account Section, Divisional Health Directorate, Dera Ismail Khan,

For information and necessary action.

Divl: By: ...