

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

Service Appeal No. 7817/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

**Dr. Zia-ur-Rehman, Management Cadre (BPS-17), presently serving as Medical Superintendent, Category "D" Hospital, Nahaqi, District Peshawar. .... (Appellant)**

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary to Government of Khyber Pakhtunkhwa Health Department, Peshawar.**
3. **The Director General Health Services, Khyber Pakhtunkhwa, Peshawar. .... (Respondents)**

Mr. Noor Muhammad Khattak,  
Advocate

... For appellant

Mr. Fazal Shah Mohmand,  
Addl. Advocate General

... For respondents

Date of Institution.....01.12.2021

Date of Hearing.....08.05.2023

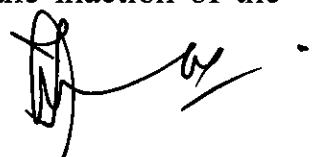
Date of Decision..... 08.05.2023

**JUDGEMENT**



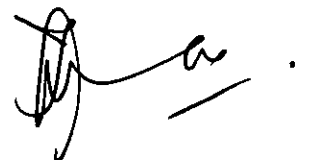
**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected Service Appeal No.7671/2021, titled "Dr. Zia-ur-Rehman Vs. the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", as common questions of law and facts are involved in both the appeals.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the inaction of the



respondents by not adjusting the appellant in the Management Cadre. It has been prayed that on acceptance of the appeal, the respondents might be directed to adjust the appellant in the management cadre alongwith all back benefits and any other remedy which the Tribunal deemed fit might also be awarded in favour of the appellant.

3. Brief facts of the case, as given in the memorandum and grounds of appeal, are that the appellant while performing his duties was regularized vide office order dated 25.07.2017 in pursuance of a notification of the provincial government. During service, the appellant was posted as Medical Superintendent (BPS-18) in Category "D" Hospital Nahqi, Peshawar vide office order dated 12.03.2020. Vide notification dated 15.07.2021, all the management cadre doctors were upgraded from BPS-17 to BPS-18. Name of the appellant was illegally and malafidely not mentioned in the notification for his upgradation to BPS-18. Feeling aggrieved from that inaction of the respondents, the appellant preferred departmental appeal/representation dated 03.08.2021. Vide notification dated 10.05.2017, the provincial government amended the Khyber Pakhtunkhwa, Health (Management) Service Rules, 2008, whereby two years cushion period was given to the general cadre officers of the Health Department holding the post of Management Cadre. The appellant was qualified as he had obtained the requisite qualification of the management cadre. While performing his duties as the Medical Superintendent (BPS-18) in the Category "D" Hospital Nahaqi, he was illegally relieved vide order dated 06.09.2021 w.e.f. 15.09.2021. Feeling aggrieved he preferred departmental appeal followed by service appeal No. 7671/2021 and vide order sheet dated

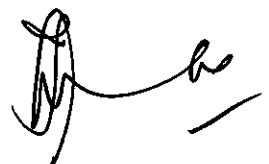


02.11.2021, the Tribunal issued interim relief by suspending the operation of the order dated 06.09.2021. Feeling aggrieved from the inaction of the respondents by not adjusting the appellant in the management cadre, he filed department appeal but no reply was received till filing of the instant appeal; hence the present appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant after presenting the case in detail argued that order dated 06.09.2021 was against the law, facts and norms of natural justice. He further argued that the appellant has not been treated in accordance with the law and as such respondents violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. According to him the impugned order was based on discrimination, favoritism and nepotism and that the appellant belonged to the management cadre and he has wrongly been relieved for the training course of the general cadre. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of the learned counsel for the appellant, argued that the appellant being not a member of Health Management Cadre was not upgraded. He further argued that on the direction of the Hon'ble Service Tribunal dated 22.02.2020, in service appeal of one Dr. Sher Muhammad, vide notification dated 10.05.2017, amendments



were made in sub rule (2) of Rule 10 of the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 which provided two years cushion period to those incumbents of the General Cadre doctors who were holding post at the time of promulgation of the ibid rules, for improving their qualification. However, the appellant was not entitled for the benefits of the cushion period. He further argued that the appellant belonged to the General Cadre but due to clerical mistake it was written as Management Cadre. So the office order was rectified and the words "Management Cadre" were replaced with "Dental Surgeon". He requested that the appeal might be dismissed.

7. After hearing the arguments and going through the record presented before us, it is found that the appellant was appointed as Dental Surgeon in the Health Department of provincial government. Record also indicates that members of Health Management Cadre in BPS-17 were upgraded to BS-18. The appellant was not upgraded being not a member of the Health Management Cadre against which he preferred departmental appeal which was not honoured. As he had the qualification required for the Health Management Cadre, therefore, he assumed that he was qualified to be placed in that cadre in the light of notification of provincial government dated 10<sup>th</sup> May, 2017 which was an amendment in the existing Rule 10, sub-rule (2) of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008. Record provided before the Bench indicates that the said rules were amended in the light of judgment of this Tribunal dated 22.02.2010 in service appeal titled Dr. Sher Muhammad. Through this amendment two years cushion period was provided to those General Cadre doctors who were holding the post at the time of promulgation of



these rules, for improving their qualification. Based on that the appellant was not entitled for the said benefit.

8. As far as order dated 12.03.2020 was concerned where the appellant had been shown as Management Cadre doctor and posted as Deputy Medical Superintendent (BPS-18) in Category "D" Hospital Nahqi, Peshawar in his own pay scale, it was substituted at a later stage, when the office of the Director General realized its mistake. Necessary correction was made by inserting the words "Dental Surgeon" in place of "Management Cadre". Record is silent whether the appellant challenged the substituted order, where his cadre was corrected, by submitting any departmental appeal to his competent authority.

9. In view of the above discussion, it is clear that the Director General, Health Services, Khyber Pakhtunkhwa had rightly nominated the appellant for the two months training at MMC Mardan, as he was a General Cadre doctor and that training was meant for him. The appeal in hand is, therefore, dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 08<sup>th</sup> day of May, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

*\*Fazle Subhan PS\**