

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

Date: 25/5/2023

Dated \_\_\_\_\_  
Diary No. \_\_\_\_\_  
Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. NIL

Dr. Aziz Khan-----Appellant

VERSUS

Government of Khyber Pakhtunkhwa Chief Secretary & Others-----  
-----Respondent

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*[Handwritten Signature]*

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

Hearing Date: 1/6/2023

Peshawar

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO. 989/2023**

Dr. Aziz Khan.....Appellant

**Versus**

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

**Respectfully Sheweth:**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**Preliminary Objections:-**

1. That the appellant has got neither cause of action nor did locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

**ON FACTS:**

1. Correct to the extent that the appellant was initially appointed on contract basis as Medical Officer (BPS-17).
2. Pertains to record.
3. Pertains to record.
4. Correct to the extent that the contract period of the appellant was not considered for pensionary benefits and length of service as only regular service entitles a civil servant for pensionary benefits and length of service. It is worth mentioning that in a similar case respondent No. 02 approached for opinion of respondent No. 03 who vide letter dated 09-12-2022 stated that there is no provision in Khyber Pakhtunkhwa Pension Rules 2021 for counting of contractual service of a civil servant towards pension and any other benefits after regularization. **(Copy of the letter dated 09-12-2022 is annexure-A)** Reliance is also placed on 2021 SCMR 767.
5. Pertains to Court record however, no such direction of the honorable Court has been annexed by the appellant it is further to clarify that the Departmental Appeal as well as Service Appeal are time barred.
6. Incorrect. No vested right of the appellant has been violated by the respondents however, reply on the grounds are as under:

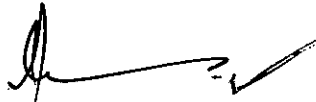
**ON GROUNDS:**

- A. Incorrect. The replying respondents acted as per Law, Rules and principle of natural justice hence denied.
- B. Incorrect. Already explained in para 4 of the facts.
- C. Incorrect. Already explained in Para 4 of the facts.

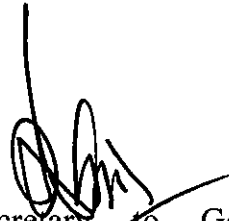
- D. Incorrect. The Honorable Tribunal has already adjudicated the matter vide its Judgment dated 12/11/2019 case titled "Dr. Alif Jan and others Vs Secretary Health Khyber Pakhtunkhwa" whereby the Honorable Court dismissed all the appeals filed by similarly placed doctors. According to 2021 SCMR 116 seniority shall be reckoned from date of regular appointment.
- E. Correct. However the replying respondents have never violated judgment of the Apex Court.
- F. Incorrect. Already explained in Para-D above.
- G. The replying respondents seek permission of this honorable Tribunal to adduce other grounds during final hearing of the case.

**PRAYER:**

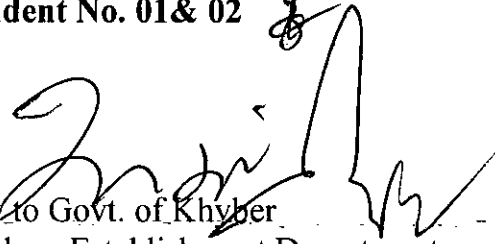
It is therefore humbly prayed that on acceptance of the comments, the instant Appeal of the Appellant may very graciously be dismissed with costs.



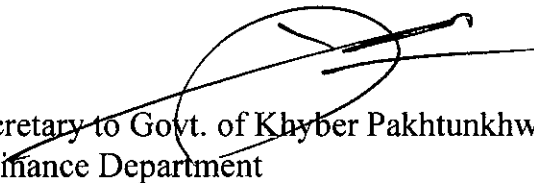
Secretary to Govt. of Khyber  
Pakhtunkhwa Health Department  
**Respondent No. 01 & 02**



Secretary to Govt. of Khyber  
Pakhtunkhwa Law & Parliamentary  
Affairs Department  
**Respondent No. 03**



Secretary to Govt. of Khyber  
Pakhtunkhwa Establishment Department  
**Respondent No. 04**



Secretary to Govt. of Khyber Pakhtunkhwa  
Finance Department  
**Respondent No. 05**



GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

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No. SO(OP-II)/LD/15-2/2022/KC/1589-92

Peshawar,  
Dated the: 09-12-2022

To

The Secretary,  
Government of Khyber Pakhtunkhwa,  
Health Department.

→ P. S/C

**SUBJECT: GUIDANCE REGARDING W.P. NO. 4573/2019 TITLED KHALIL MUHAMMAD KHAN & W.P. NO. 4907/2019 TITLED KHAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA.**

Dear Sir,


I am directed to refer to your letter No. SOG/HD/1-2/P&T/2022, dated: 26-08-2022, on the subject noted above and to state that the case has been examined in light of judgment of the Peshawar High Court rendered in writ petition No. 3394-P/2016 titled Amir Zeb vs District Accounts Office Nowshera, the Civil Servants Act, 1973, the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

2. The Peshawar High Court in the Amir Zeb's case has given relief to the petitioner who's services were regularized through the amending Acts i.e. the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and 2013 and because the Act of 2013 was given effect from the 30<sup>th</sup> day of June, 2001 whereas the petitioners were appointed initially on contract basis on the 1<sup>st</sup> July, 2001. In the instant case the petitioners have been regularized through the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 with immediate effect and not from the date of their first appointment in the Project.

3. As far as consideration of temporary service i.e. contract basis in a project or otherwise for pensionary benefits is concerned, it may further be added that the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 do not cover temporary service to be counted towards pensionary benefits.


4. Keeping in view the aforementioned legal proposition and the dicta of the judgment of the High Court rendered in Amir Zeb's case, the case of the instant petitioner is neither identical to Amir Zeb's case nor is covered under the exiting legal provisions. Therefore, their plea for regularization from the date of initial appointment is devoid of merits and cannot be entertained.

Yours faithfully,

  
SECTION OFFICER (OP-II)

Endst: No. & date even:-

- Copy is forwarded for information to:
1. PS to Secretary, Government of the Khyber Pakhtunkhwa Law Department.
  2. PA to Chief Legislation Officer, Law Department.

  
SECTION OFFICER (OP-II)

o/c

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

**Service Appeal No. NIL**

Dr. Aziz Khan-----Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary &  
Others-----Respondent

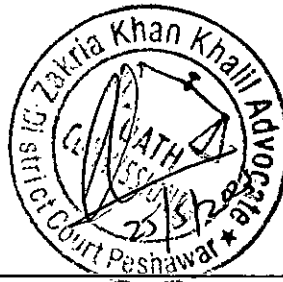
**AFFIDAVIT.**

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

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

Identified by:-

Add: Advocate General,  
Khyber Pakhtunkhwa





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

AUTHORITY LETTER

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

Secretary to Govt. of Khyber Pakhtunkhwa  
Health Department  
Secretary to Govt. of  
Khyber Pakhtunkhwa  
Health Department

*Handwritten signature and date: 9/15/23*