


01.03.2023


Appellant alongwith clerk of his counsel present.

Mr. Muhammad Jan, District Attorney for the respondents present.

Lawyers are on strike. To come up for arguments on 13.03.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)


13th March, 2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant seeks time on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 29.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

22.11.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come for arguments before the D.B. on 19.01.2023.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman


D


19th Jan. 2023

Lawyers are on strike today.

To come up for arguments on 01.03.2023 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member(E)


(Rozina Rehman)
Member (J)


24th May, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Safiullah, Focal Person for the respondents present.

It is noted with serious concern that like other cases in this case too, the department has submitted reply/comments which is quite evasive. During the course of arguments, when learned AAG was confronted whether ~~that~~ the impugned order was that of upgradation or promotion, he sought time to produce the relevant record. The appeal pertains to the year, 2018, last chance is given to the AAG for production of the record sought to be produced. Respondents are also directed to depute a well conversant officer to assist the Tribunal properly. To come up for arguments on 08.08.2022 before the D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

8-8-2022

Due to Public holiday the case is
adjourned to 22-11-2022


Reader

14.06.2021

Appellant in person present.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General for respondent present.

Former made a request for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 18.10.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

18.10.2021

Junior to counsel for the appellant and Mr. Muhammad Rasheed, DDA for the respondents present.

Due to general strike of the bar, counsel for the appellant is not in attendance today. To come up for arguments on 01.02.2022 before the D.B.



(Salah-ud-Din)
Member(J)

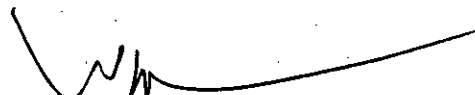


Chairman

01.02.2022

Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 24.05.2022 before the D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

16.10.2020

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Appellant requested for adjournment as his counsel is busy before Hon'ble Peshawar High Court Peshawar. Adjourned. To come up for arguments on 10.12.2020 before D.B.



(Atiq-Ur-Rehman Wazir)
Member


(Muhammad Jamal Khan)
Member

10.12.2020

Counsel for the appellant and Muhammad Jan, DDA alongwith Saleem Javed, Litigation Officer for the respondents present.

Former requests for adjournment due to his over occupation today. Adjourned to 08.03.2021 for hearing before the D.B.

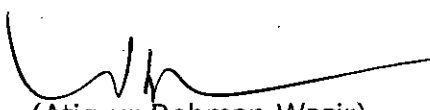

(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

08.03.2021

Counsel for the appellant and Asif Masood Ali Shah, DDA for the respondents present.

Former requests for time to go through the brief. Adjourned to 14.06.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)

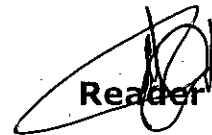

Chairman

03.4.2020 Due to COVID-19, the case is adjourned
to 30.6.2020 for same as before.



30.06.2020


Due to COVID-19, the case is adjourned to 25.08.2020
for the same.



Reader

25.08.2020

Due to summer vacation case to come up for the
same on 16.10.2020 before D.B.



Reader

14.10.2019

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 20.11.2019 before D.B.



Member



Member

20.11.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 16.01.2020 for arguments before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

16.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned to 05.03.2020 for arguments before D.B.



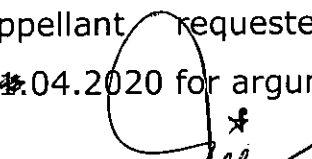
(Ahmad Hassan)
Member




(M. Amin Khan Kundi)
Member

05.03.2020

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 03.04.2020 for arguments before D.B.



(Mian Mohammad)
Member



(M. Amin Khan Kundi)
Member

15.05.2019

Appellant with counsel present. Written reply not submitted. Sohail Assistant representative of respondent No.3 present and seeks time to furnish written reply/comments. No one present on behalf of respondents No.1 & 2. Hazrat Shah (for respondent No.1) and Jafar Ali Assistant (for respondent No.2) absent. Notice be issued to the respondents No.1 & 2 and their absent representatives for written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B.



Member

01.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Saleem Litigation Officer on behalf of respondent No. 1, 2 and Sajid Superintendent for the respondent No. 3 present. Representative of the respondents department seeks time to furnish written reply/comment. Last opportunity is granted. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.




Member

27.08.2019

Appellant in person and Addl. AG alongwith Sajid Superintendent and Salim Javed, Litigation Assistant for the respondents.

Representatives of the respondents have submitted parawise comments on behalf of respondents which are placed on record. The appeal is assigned to D.B for arguments on 14.10.2019. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

29.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Jaffar Ali, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 04.03.2019 before S.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

04.03.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Last opportunity is granted. Adjourned to 09.04.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

09.04.2019

Counsel for the appellant and Hazrat Shah, Superintendent for the respondents No. 1 & 2 alongwith Addl. AG for the respondents present.

The representative of respondents No. 1 & 2 states that the reply is under preparation and would be ready for submission shortly.

Adjourned to 15.05.2019 on which date the requisite comments shall positively be submitted. Learned AAG undertakes to procure the comments of respondents No. 3 on the next date.


Chairman

07.09.2018 Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has approached this Tribunal by filing the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, being aggrieved against the Notification dated 05.12.2016 whereby the appellant was upgraded w.e.f 04.05.2012 but without arrears.

Upon query to the learned counsel for the appellant that when this Tribunal has got no jurisdiction to entertain service appeal which involves issue relating to up-gradation, how the present service appeal is entertain able by this Tribunal, the learned counsel for the appellant in response insisted that this Tribunal has the jurisdiction to entertain and adjudicate upon the present service appeal.

In the interest of justice, the present service appeal is admitted for regular hearing subject to all the legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. ~~The legal objections in dispute are hereby dismissed.~~ To come up for written reply/comments on 01.11.2018 before S.B.

Appellant Deposited
Security & Process Fee


Member

01.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 19.12.2018.


MEMBER

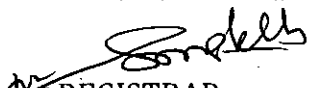

19.12.2018 Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General present. Written reply not submitted. Notice be issued to the respondents with the direction to furnish written reply/comments. Adjourn. To come up written reply/comments on 29.01.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1057/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/08/2018 28/8/18	<p>The appeal of Mr. Israr-ud-Din presented today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>7-9-18</u>.</p> <p> MEMBER</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1057/2018

Israr-Ud-Din

V/S

Health Deptt:

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	1-3
2.	Copy of order	A	04-05
3.	Copy of notification	B	06-07
4.	Copy of departmental appeal	C	08-09
6.	Copy of judgment	D	10-12
12.	Vakalat nama	-----	13

APPELLANT

THROUGH:


(SYED NOMAN ALI BUKAHRI)

&


(UZMA SYED)

ADVOCATES, HIGH COURT

Cell No: 0335-8390122

OFFICE ADDRESS:

4TH Floor, Room No Fr #8
Bilour Plaza, sadar Bazar
Peshawar.

Date: ___/___/2018

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. _____/2018

Mr. Israrud Din, chief Technician (BPS-16)
RHC Akbar Pura Nowshera.

(Appellant)

VERSUS

1. The Secretary Health Deptt., KPK, Peshawar.
2. The Director General Health Services KPK Peshawar
3. The Finance Secretary KPK, Peshawar.

(Respondents)

 =====
APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.12.2016 WHEREBY THE APPELLANT HAVE BEEN UPGRADED/PROMOTED FROM PHC TECHNICIAN (MP) BS-12 TO Sr PHC TECHNICIAN (MP) BS-14 W.E.FROM 04.05.2012 (WITH PAY PROTECTION) BUT WITHOUT ARREARS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 05.12.2016 MAY BE MODIFIED TO THE EXTENT OF ARREARS AND RESPONDENTS MAY BE DIRECTED TO PAID ARREARS OF THE POST OF Sr PHC TECHNICIAN (MP) BS-14 WITH ALL BACKS AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was initially appointed as medical technician BPS-09 and was promoted to the post of PHC Technician (M.P) BS-12. The post of the appellant was upgraded/promoted to Sr. PHC Technician (M.P) BS-14 and further promoted to the post of chief technician BS-16 and has good service record through out in long tenure and work with full zeal and zest.
2. That the appellant was upgraded to the post of Sr. PHC Technician (M.P) BS-14 vide order dated 05.12.2016 w.e.from 04.05.2012 in the light of notification dated 04.05.2012 with pay protection without arrears. **(Copy of order and notification are attached as Annexure- A & B).**
3. That thereafter, the appellant filed departmental appeal for the arrears of the post of Sr. PHC Technician (M.P) BS-14 w.e.from 04.05.2012 but respondents was failed to taking any action on the departmental appeal of the appellant within statutory period of 90 days. **Copy of the departmental appeal is attached as Annexure-C.**
4. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:

- A) That order dated 05.12.2016 to the extent of non-granting arrears and not taking action on the departmental appeal of the appellant within statutory period of 90 days is against the law, fact, norm of justice and material on record.
- B) That the appellant was promoted/upgraded to post of Sr. PHC Technician (M.P) BS-14 vide order dated 05.12.2016 w.e.from 04.05.2012 vide order dated 05.12.2016 without arrears which is not sustainable in the eye of law and against the norms of justice.
- C) That the same nature appeal no 930/2017 was allowed vide judgment dated 26.02.2018 and the arrears were allowed. So the appellant was also on same footing and the arrears may also be allowed to the appellant. **Copy of the judgment is attached as annexure-D.**

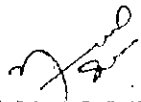
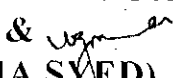
3

- D) That non granting arrears to the appellant post of Sr. PHC Technician (M.P) BS-14 w.e.from 04.05.2012 is not warrant by law and laible to be modified order dated 05.12.2016.
- E) The appellant seeks permission to advance other grounds and proofs at the time hearing.

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


APPELLANT
Israr-ud-din

THROUGH:


(SYED NOMAN ALI BUKAHRI)
& 
(UZMA SYED)
ADVOCATES, HIGH COURT

**DIRECTORATE GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWA PESHAWAR.**

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.
Exchange Ph: 091-9210187 -- Fax: 091-9210130 Web: www.healthkp.gov.pk



OFFICE ORDER.

Consequent upon approval accorded by the competent Authority the following PHC Technician (MP) BS-12 have been upgraded to the post of Sr. PHC Technician (MP) BS-14 w.e.f 01-05-2012 (with pay protection) in the light of Notification No. SOH III/S GO/2005 (Paramedics) dated 01-05-2012, (without arrears).

S.NO	Name	Current Place of Posting
01.	Mr. Khalid Javed	DHO Abbottabad.
02.	Mr. Basharat	DHO Mansehra.
03.	Farhadullah	DHO Peshawar
04.	Saedullah	DHO Mardan.
05.	Jehan Bibi	DHO Swabi
06.	Abdur Rehman	DHS Fata
07.	Hasanullah	DHO Lower Dir
08.	Maik Sher	DHO D.I Khan
09.	Muhammad Najjullah	DHO Chitral
10.	Aziz ur Rahman	DHO Dir Lower
11.	Ali Nawaz	DHO Hangu
12.	Muhammad Saeed	DHO Swabi
13.	Israrud Din	DHO Swabi
	Rahim Khan	DHO Nowshera
15.	Parvez Bibi	DHO Peshawar
16.	Aliul Husain	DHO Shangla
17.	Khaista Ishaq	DHO Dir Lower

10/3/12

On their up-gradation to the post of Sr. PHC Technician (MP) BS-14 the following posting/Transfers hereby ordered in the interest of public service.

S.No	Name & Designation	From	To	Remarks
01.	Mr. Khalid Javed	DHO Abbottabad.	DHO Abbottabad.	Against the Vacant post
02.	Mr. Basharat	DHO Mansehra.	DHO	

03.	Farhadullah	DHO Peshawar	DHO Peshawar	
04.	Sacdullah	DHO Mardan.	DHO Mardan.	
05.	Jehan Bibi	DHO Charsadda.	DHO Swabi	
06.	Abdur Rehman	DHS Fata	DHS Fata	New reflected Post in Fata.
07.	Ihsanullah	DHO Lower Dir	DHO Lower Dir	
08.	Malik Sher	DHO D.I Khan	DHO D.I Khan	
09.	Muhammad Najiullah	DHO Chitral	DHO Chitral	
10.	Aziz ur Rahman	DHO Dir Lower	DHO Dir Lower	
11.	Ali Nawaz	DHO Hangu	DHO Hangu	
12.	Muhammad Sareer	DHO Peshawar	DHO Swabi	
13.	Israrud Din	DHO Peshawar	DHO Swabi	
14.	Rahim Khan	DHO Nowshera	DHO Nowshera	
15.	Parvez Bibi	DHO Peshawar	DHO Swabi	
16.	Akaf Hussain	DHO Shangla	DHO Swabi	
17.	Khaista Irshad	DHO Dir Lower	DHO Dir Lower	

Sd/XXXXXXXXXXXXXXXXXX

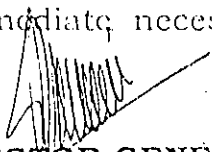
DIRECTOR GENERAL HEALTH SERVICES KPK, PESHAWAR.

No. 7269-75 /Promotion CellDated Peshawar. 05 / 17 / 2016

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department, Peshawar. w/r to his Notification No. SOH-III/8-60/2015 dated 51 07-2016.
2. Director Health Services (FATA) Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Abbott bad, Mansehra, Peshawar, Mardan, Charsadda, Swabi, Dir Lower, D.I Khan, Chitral, Hangu, Shangla,
4. District Account Officer, Abbott bad, Mansehra, Peshawar, Mardan, Charsadda, Swabi, Dir Lower, D.I Khan, Chitral, Hangu, Shangla.
5. PA, to DGHS, Khyber Pakhtunkhwa, Peshawar.
6. D.A Concerned.
7. Personal file.

for information and immediate necessary action.


DIRECTOR GENERAL HEALTH SERVICES KPK, PESHAWAR.

2/11/16



GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT
Dated the Peshawar 09 May, 2012.

NOTIFICATION.

No. SOH-III/8-60/05 (Paramedics) The Competent Authority is pleased to withdraw this Department Notification of even No. Dated 25-08-2006 and restore this Department Notification of even No. Dated 10-05-2006 with immediate effect with the following additions:-

- i) Initially the one time up-gradation/Promotion is to be implemented upto BPS-17.
- ii) A joint seniority is to be developed in BPS-17. Based on the final joint seniority list of BPS-17 further promotion to BPS-18, BPS-19 and BPS-20 will be carried out on the basis of seniority-cum-fitness from BPS-17 to BPS-18, from BPS-18 to BPS-19 and BPS-19 to BPS-20 on step by step basis.
- iii) Those who have been recruited after May, 2006 they will be placed at bottom of the seniority list of their respective cadre/service. However, an anomaly committee will look into all such anomalies arising in the course of implementation of the one time up-gradation/Promotion exercise.
- iv) The senior post BPS-18 to BPS-20 will be filled in accordance with the prescribed manner as laid down in the existing approved Service Rules.
- v) The revival of Notification Dated 10-5-2006 will have no retrospective effect and one time up-gradation/Promotion will be with immediate effect as laid down in the promotion policy of the Provincial Government.


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endorsement No. & date as above.

Copy forwarded to the:-

1. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa.
3. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

4. The Secretary FATA, Governor's Secretariat Peshawar.
5. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
6. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
7. The Director General, Health Services, Khyber Pakhtunkhwa.
8. The Inspector General of Prisons, Khyber Pakhtunkhwa.
9. The Director General, Social Security, Khyber Pakhtunkhwa.
10. The Director, PHSA, Khyber Pakhtunkhwa.
11. The Chief HSRRU.
12. The Chief Planning Officer Health Department.
13. Director Health Services FATA, Peshawar.
14. All Chief Executives of Teaching Hospitals in Khyber Pakhtunkhwa.
15. All Medical Superintendents of DHQ Hospitals in Khyber Pakhtunkhwa.
16. All Executive District Officers (Health) of Khyber Pakhtunkhwa.
17. The Director of Information, Khyber Pakhtunkhwa.
18. All Agency Surgeons/MS of FATA.
19. All Principals of Medical Colleges in Khyber Pakhtunkhwa.
20. The Dean, P.G.M.I, Peshawar.
21. All District Accounts Officers in Khyber Pakhtunkhwa.
22. All Agency Accounts Officers in Khyber Pakhtunkhwa.
23. The Section Officer (Budget) Health Department.
24. PS to Chief Secretary Khyber Pakhtunkhwa.
25. PS to Minister for Health, Khyber Pakhtunkhwa.
26. President, Provincial Paramedical Association, Khyber Pakhtunkhwa, Peshawar.
27. The Manager Govt. Printing Press, Khyber Pakhtunkhwa.


29/5/2012

To,

Ameske - C

(08)

The Secretary,
Health Department,
Khyber Pakhtunkhwa, Peshawar.

Y.No. 6755
Date 2.5.18
Secretary Health

Subject:

Application for allowing/issuing back benefits/arrears of the post of Chief Technician (BPS-16) w.e.f 27.07.2012.

Respected Sir,

It is most humbly stated that i was initially appointed as medical Technician (BPS-9) and during service i was further promoted to the PHC Tech: (M.P) BS-12. That the post of the appellant i.e. PHC Technician (M.P) BS-12 was up-graded to BS-14 vide notification dated 02-3-2016 which was allowed/up-graded w.e.f 27.7.2012. That i was performing my duties as PHC Technician (M.P) BS-14 before your good self Department was further promoted to the post Chief Technician (BPS-16) vide Notification dated 11/8/2015. That after promotion i am performing duties as Chief Tech (BPS-16) quite effeciently but the benefits of the said post i.e. PHC Technician (BPS-14) and Chief Technician (BPS-16) w.e.f 27-7-2012 has not been allowed/issued till dated.

It is therefore, most humbly requested that on acceptance of this application the appellant may

allowed for the benefits of the Said Nos
v.e. f 27-07-2012 and the same may be issue
to the appellant in light of the judgement da
26-02-2018 passed by the august Khyber Pakht
Service Tribunal, Peshawar.

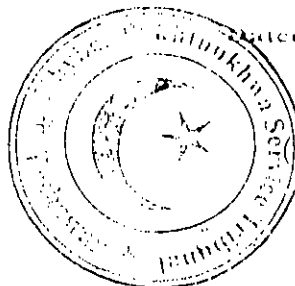
Dated: 02-05-2018.

Appellant
Qari
Israr-Ud-Din,
Chief Technician (EPS-16),
RHC Akbar Pura, Nowshera

copy to:

DG Health Department,
KPK, Peshawar.

Mob NO-031396

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.APPEAL NO. 930 /2017Khyber Pakhtunkhwa
Service TribunalCase No. 965Mr. Gul Zeb Khan (PCS SG BS-21),
Member (Tech:) Service Tribunal Peshawar.Dated: 24-8-2017

Appellant)

VERSUS


1. The Provincial Govt: through The Chief Secretary KPK, Peshawar.
2. The Chief Secretary Govt of KPK, Peshawar.
3. The Secretary Establishment Deptt: KPK, Peshawar.
4. The Secretary Finance Deptt: KPK, Peshawar.

(Respondents)

 =====
 APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 15.02.2017 WHEREBY THE APPELLANT WAS PROMOTED TO BS-21 WITH IMMEDIATE EFFECT AND NOT FROM HIS DUE DATE , AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 15.02.2017 MAY BE MODIFIED AND RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR ANTE-DATED PROMOTION FROM THE DATE WHEN JUNIORS TO HIM WERE PROMOTED () WITH ALL BACKS AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

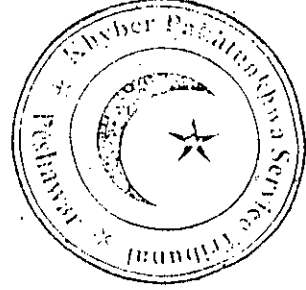
ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

4/8/17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 930/2017

Date of Institution ... 24.08.2017
Date of Decision ... 26.02.2018



Mr. Gul Zeb Khan (PCS SG BS-21). Member Khyber Pakhtunkhwa Service Tribunal, Peshawar. ... (Appellant)

VERSUS

1. The Provincial Government through the Chief Secretary, KPK, Peshawar and three others. ... (Respondents)


Mr. M. ASIF YOUSAFZAI, Advocate ... For appellant

MR. ZIAULLAH, Deputy District Attorney ... For respondents.

ATTESTED

MR. NIAZ MUHAMMAD KHAN, MR. MUHAMMAD AMIN KHAN KUNDI, ...

CHAIRMAN MEMBER


EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant filed the present service appeal for ante-date promotion. During the pendency of the present appeal, the department issued a notification dated 16.10.2017, by accepting the request of the appellant but without arrears.

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.K Service Tribunal, Peshawar

Israr Uddin

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Health Deptt:

(Respondent)
(Defendant)

I/We, Israr Uddin

Do hereby appoint and constitute **Syed Noman Ali Bukhari, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20__

Israr
(CLIENT)

ACCEPTED

Syad
Syed Noman Ali Bukhari
Advocate High Court Peshawar.

Cell: (0335-8390122)

Uzma Syed

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

SERVICE APPEAL NO. 1057 OF 2018

Israr ud Din.....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 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 the 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 Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.

ON FACTS:

1. Para No. 1 is pertains to record. hence no comments.
2. Para No. 2 is incorrect. The Appellant has been upgraded from BPS-12 to BPS-14 vide Directorate of Health Office Order No. 7869-75 dated 05/12/2016 from retrospective effect i.e. 09/05/2012 without arrears according to Section-12 Para-07 of APT Rules 1989 (Annex-A).

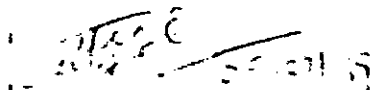
3. Para No. 3 is incorrect. Appeal of the Appellant was not acceded in the light of rules..
4. Para No. 4 no comments.

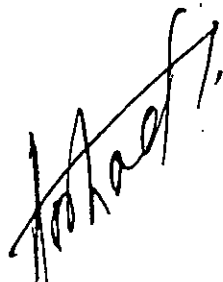
ON GROUNDS


- A. Para-A is incorrect. As already explained in Para No. 2 of the Facts.
- B. Para-B is incorrect. As already explained in Para No. 2 of the Facts.
- C. Para-C is incorrect. As already explained in Para No. 2 of the Facts.
- D. Para-D is incorrect. As already explained in Para No. 2 of the Facts.
- E. Para-E is Legal, needs no comments.

PRAYER:

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


Secretary, Government of Khyber Pakhtunkhwa.
Respondent No. 01


Director General Health Services.
Khyber Pakhtunkhwa.
Respondent No. 02


Secretary Finance, Khyber Pakhtunkhwa.
Respondent No. 03

Section-12Seniority**Determination of seniority of officials who are allowed to withdraw their resignation**

Sl.No1

A question has arisen whether a Government servant who resigned and has subsequently been allowed to withdraw his resignation should be assigned seniority and given other benefits which would have accrued to him had he not resigned.

2. When a resignation tendered by a Government servant has been accepted and the acceptance has been communicated to him, it becomes final. There can be no question of allowing him to 'withdraw' the resignation.
3. Where a Government servant who has tendered resignation withdraws it before it is accepted by the competent authority, or where, after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation, he continues in the post held by him without a break and the question of re-fixation of his seniority, etc. does not arise.
4. Where an appellate authority finds that the resignation was not tendered voluntarily or that it is otherwise null and void, the appellate authority may re-appoint the Government servant concerned. On re-appointment the Government servant shall be regarded as having continued in service throughout.
5. If a Government servant, whose resignation has been accepted and communicated to him, is appointed to Government service thereafter, such appointment shall be regarded as a fresh appointment. The seniority, pension, leave, etc. of such a Government servant shall be fixed in accordance with the rules applicable to him as if this appointment was his first appointment to Government service.
6. There may, however, be cases in which it may not be fair to treat such a re-employed Government servant as a new recruit and it is proposed to give him any benefit in relaxation of the rules, the orders of the Government should invariably be obtained.

(Authority S&GAD's letter No.SOXII/2-96/59, dated 24.12.59)

(iii) The CR dossier is incomplete or any other document/information required by the PSB/DPC for determining a Civil Servant's suitability for promotion is not available for reasons beyond the control of the person concerned.

4. If an officer who is eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, the case of such an officer should be considered for promotion as soon as the mistake is noticed.

5. If a Civil Servant is superseded, he shall not be considered for promotion unless he earns one more ACR for the ensuing one full year.

6. The Civil Servant whose promotion has been deferred will be considered for promotion as soon as the reason on the basis of which deferment took place ceases to exist. The cases of Civil Servants falling under any of the three categories in sub-para(c) of Para 3 above do not warrant proforma promotion but are required to be considered for promotion after determining the correct seniority over their erstwhile juniors in the higher post.

7. If and when an officer after his seniority has been correctly determined or after he has been exonerated of the charges or his CR dossier is complete or the adverse remarks in his CRs have been expunged, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and the Competent Authority and is selected for promotion to the next higher grade, he shall be deemed to have seniority on a par with the officers junior to him who were considered at the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section(4) of Section 8 of the North-West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior. This proviso also applies to cases where the promotions of two or more officers are notified on the same date but the junior of these officers take over charge earlier than his senior, particularly in cases where the senior officer is forced to take over later for reasons of distance or difficulty in the assumption of charge. This proviso read with general principles of seniority which are deemed to be rules made under Section 26 of the North-West Frontier Province Civil

Servants Act, 1973, enable the left over persons to regain seniority without effecting retrospective promotion. However, in such cases, the intervening period can be counted towards increments under F.R.26(c) but without arrears..

8. Officers who are approved by the Provincial Selection Board/Departmental Promotion Committee and the Competent authority for promotion to the higher grade on an earlier date shall rank senior to those who are approved on a later date except those referred to in para 7 above.
9. A Civil Servant will only be promoted within his own cadre. A Civil Servant posted outside his cadre temporarily on account of deputation on foreign service or duty abroad including Pakistan Missions abroad will be considered for promotion on his turn but if selected, the offer of promotion should be made to him and he should be asked to revert to his parent cadre/Department to take up the higher appointment. If he declines to revert, then his actual promotion will take place only when he rejoins his parent cadre. His seniority in the higher post/grade would be determined from the date he is promoted to it in due course after his reversion to the parent cadre.
10. A Civil Servant on deputation to a Foreign Government, International Agency or Private Organization abroad will be considered for promotion only on his return to Pakistan. He will be given intimation and asked to return to Pakistan before his case comes up for consideration for promotion in accordance with his seniority position; if he fails to return he will not be considered for promotion. Such an officer will have to earn at least one ACR after his return to Pakistan before he is considered for promotion. The clearance approval already accorded to a deputationist would lapse automatically if he fails to return on expiry of the deputation period already approved by the Government.
11. If a Civil Servant is cleared for promotion to the higher post/grade by the competent authority is not promoted within a period of six months or the expiry of the current calendar year, whichever is later, the clearance would lapse. The case of such a Civil Servant would require placement before Provincial Selection Board/Departmental Promotion Committee afresh.

(Authority: SOR-I(S&GAD)1-29/75, dated 13.4.87)

Before The KP Service Tribunal, Peshawar

1057/2018

Isra-udin

vs

Health Dept

Application for adjournment

Sir,

Respectfully Submitted as

under

- that the above mention case was
fixed today before this Hon'ble tribunal

- the counsel of appelland requested
for adjournment to file rejoinder in
the above mention service appelland.

Please adjourned the above
mention service appelland kindly.
appelland uzma syed
through sued Noman A.D.

17-10-2019