

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1559/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5956

Dated 12/6/2022

Malik Tahir Awan.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

.....Respondent

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[Signature]
Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

12/5/23

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1559 OF 2022

Malik Tahir Awan.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 4

Respectfully Sheweth:

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 this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That there is no final order (original or appellate) hence the appeal is not maintainable under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974. Reliance is placed on 2006 SCMR 1630.
9. That the matter pertains to up gradation from BPS-09 to BPS 11 hence the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
10. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

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01. Pertains to record. However it is worth mentioning that the appellant was appointed in LRH (now MTI) accepted the same post in BPS-09 and did not object the same till the instant appeal
02. Pertains to record. It is to state that Mr Gulab shah was appointed by the KTH Peshawar against the post in the BPS 11 which is a separate entity.
03. Pertains to record.
04. Incorrect. However the departmental appeal mentioned in the para is pertains to upgradation which is filed in the year 1998 and is badly time barred as the same has not been properly pursued before proper forum i.e High Court. The post of Florescence's Angiography Technician BS-09 has been amalgamated in the cadre of ECG Technician and also re-designated as JCT Cardiology BS-09 in light of the approved Service structure of Paramedics vides Government Notification No. SOH-III/8-60/05 (Paramedics) dated 25.08.2006 (Annex-A). The appellant (Malik Tahir Awan) was CT Ophthalmology and has been promoted to BS-12 on 20.04.2010 and subsequently promoted to BS-16 on 20.09.2012. He has been promoted as Clinical Technologist Ophthalmology BS-17, on 08.01.2020. On 16.11.2021, he has been promoted as Senior Clinical Technologist BS-18 and now placed in the Seniority list at his proper place however it is worth mentioning that none of the promotion order has been challenged by the appellant.
05. Incorrect, as explained in Para 04 above.
06. Incorrect, explained in Para 04 above.
07. Incorrect. There is no second departmental appeal under the law. He was informed about the factual position through Medical Superintendent LRH Peshawar on 18.04.2014. (Annex-B).

(13)

08. Pertains to record however none of the order mentioned had been challenged by the appellant before the proper forum. He has already been promoted to BS12, 14, 16, 17 and BS-18 as per approved Service Rules in his own cadre which he availed.
09. Incorrect, as explained in Para 07 above. It is worth to mention that the representation mentioned in the para is 3rd representation which is violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
10. Incorrect, as explained in Para 08 and 09 above.
11. Incorrect, as explained in Para 08 and 09 above.
12. Incorrect, as explained in above Para 08 and 09 above.
13. Correct to the extent of promotion Notification dated 21/07/2017, rest of the para is replied in 08 and 09 above.
14. Incorrect, His name was placed at proper place in the Seniority list of Clinical/PHC Technologist BS-17. It is further to clarify that no seniority list has been challenged by the appellant till date hence denied.
15. Correct to the extent of promotion Notification dated 11.08.2021. His name was included in the Seniority list of Senior Clinical Technologist BS-18 at his proper place.
16. Incorrect, Already explained in in 08 and 09 above. The instant appeal is badly time barred secondly the prayers of the appellant is upgradation which is beyond the jurisdiction of the honorable Tribunal
17. Needs no comments being formal.

ON GROUNDS:

- A. Incorrect, the replying respondents acted as per law and rules.
- B. Incorrect, as explained in Para A.

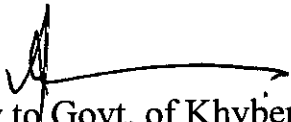
C. Incorrect, as explained in Para A.


D. Incorrect, as as explained in Para A.

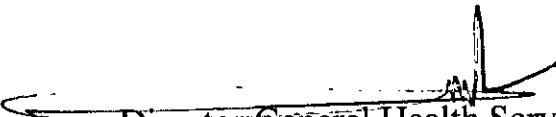
E. The Answering respondents also seek prior permission of this Honorable Court to adduce additional grounds at the time of arguments

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 Finance Department
Respondent No. 03


Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 04

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GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Dated Peshawar the 25th August, 2006

NOTIFICATION

NO SOH-III /8-60/05 (Paramedics). In supersession of this Department's Notification of even number dated 10th May 2006 and in pursuance of the decision taken by the Provincial Cabinet in its meeting held on 27th December 2005, the Competent Authority is pleased to approve eight stage Paramedics Services Structure of NWFP as follows:-

- (1) The existing 57 different categories of Paramedics at annex A are restructured into 14 cadres as annexure B.
- (2) In all the aforesaid cadres/specialties, the posts in various pay scales shall be integrated/categorized and re-designated as under:-

S.No	Existing Posts	Re-designation
i)	Posts in BPS-5 to BPS-9 in all specialties	Junior Technicians (BPS-9)
ii)	Posts in BPS-10 to BPS-12 in all specialties	Technicians (BPS-12)
iii)	Posts in BPS-13 to BPS-14 in all specialties	Senior Technicians (BPS-14)
iv)	Posts in BPS-15 to BPS-16 in all specialties	Chief Technicians (BPS-16)
v)	Posts in BPS-17 in all specialties	Technologists (BPS-17)
vi)	Posts in BPS-18 in all specialties	Senior Technologist (BPS-18)
vii)	Posts in BPS-19 in all specialties	Chief Technologist (BPS-19)
viii)	Posts in BPS-20 in all specialties	Principal Technologists (BPS-20)

The words "clinical" shall be mentioned with the categories of posts meant for Paramedics working in the hospitals and "Primary Health Care" with the paramedics working in the field along with mention of specific specialty (e.g. Junior Clinical Technician (Radiology) and Junior Primary Health Care Technician (Multi purpose)).

- (3) The number of Posts in BPS-9, BPS-12, BPS-14, BPS-16, BPS-17, BPS-18, BPS-19 and BPS-20, in the service shall be worked out according to the following proportionate ratio:-

S.No.	BPS	Percentage
a)	Post in BPS-9	80%
b)	Post in BPS-12	12%
c)	Post in BPS-14	1.5%
d)	Post in BPS-16	2.5%
e)	Post in BPS-17	1.66%
f)	Post in BPS-18	0.09%
g)	Post in BPS-19	0.04%
h)	Post in BPS-20	0.01%

Attest
[Signature]

**Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa**



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

No. 3572 /AE-VII

Dated 18/5 /2014.

Annex A

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(6)

The Medical Superintendent,
Lady Reading Hospital,
Peshawar.

SUBJECT:

**APPLICATION FOR PROMOTION ON THE VACANT POST OF
CLINICAL TECHNOLOGIST (BPS-17) OPHTHALMOLOGY.**

Dear Sir,

I directed to refer to your letter No. 44449/LRH/E-III dated 02.02.2013 on the subject noted above and to state that Mr. Malik Tahir Awan, Chief Clinical Technician (Ophthalmology) BS-16 has recently been upgraded / promoted by office order No. SOH-III/8-60/2005(paramedics) on 02.08.2012 and will be promoted to the post of Clinical Technologist (Ophthalmology) BS-17 after rendered 04-years service according to the existing approved services rules.

[Signature]
ASSISTANT DIRECTOR (P-III)

DIRECTORATE GENERAL HEALTH
SERVICES KPK, PESHAWAR.

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[Signature]

[Signature]
[Signature]

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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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. 1559/2022 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.

It is further stated that on oath in this appeal
The answering respondent have neither been placed ex-parte nor Pate nor their defence has been struck off.

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

12/5/23

Add: Advocate General,
Khyber Pakhtunkhwa

②

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

SERVICE APPEAL No. 1559/2022

MALIK TAHIR AWAN VS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

AUTHORITY LETTER

Mr. Muhammad Tufail (Section Officer Litigation-II) Health Department Khyber Pakhtunkhwa, Peshawar are hereby authorized to attend the case on behalf of Secretary Health and to sign any document on our behalf or record any statement or do any act for defense of the instant Service Appeal up to Service Tribunal, Khyber Pakhtunkhwa.

Muhammad Tufail
13/6/23

**Section Officer (Lit-II)
(Health Department)**

**Section Officer (Lit-I)
Health Department
Khyber Pakhtunkhwa**