

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 291/2023

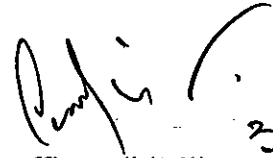
Dr. Asad Ullah Khan.....(Appellant)

Versus

Government of Khyber Pakhtunkhwa and others.....Respondents

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31/7/23
Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 291 OF 2023

Dr. Asad Ullah Khan..... **Appellant**

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 05

Respectfully Sheweth:

Khyber Pakhtunkhwa
Service Tribunal
Registry No. 6967
Dated 10/08/23

Preliminary Objections:-

1. That the appellant has got no cause of action or 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 the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Correct to the extent of promulgation of the Khyber Pakhtunkhwa Health Management Service Rules 2008 and reflection of the post of the appellant in schedule I of the rules however; it is worth to mention that in schedule I besides the post of the appellant post of instructor of PHSA and public health school are also

mentioned at serial No. 4 & 6 of the schedule who are from Nurse / paramedics cadre.

4. Correct to the extent that post of the appellant is not reflected in schedule-I for member of service BPS-18 however, it is worth to mention that there is no prospectus of promotion of the appellant to BPS-18, BPS-19 or BPS-20 in his own cadre therefore, in the Management cadre Rules 2008 no such post has been mentioned. It is worth to mention that when there is no post for further promotion of the appellant, available in cadre therefore no such right of promotion of the appellant has been violated by the replying respondents. It is worth to mention that the Management cadre Rules 2008 has been promulgated in the year 2008 however, till date no departmental appeal has been filed by the appellant against the ibid Rules 2008 the so called departmental appeal annexed at Annexure-H of the appeal has been filed for inclusion of his name in the management cadre seniority which is totally different from the instant appeal. Seniority of the incumbent of all the posts mentioned in schedule-I is countable within their cadre and not jointly. It is further to clarify that not only the departmental appeal but the instant appeal is not clear as to whether the appellant seeks his inclusion into the seniority of Doctors of management cadre, Nurses, paramedics or ministerial posts. Therefore, the instant appeal is not maintainable on this score alone.
5. No vested right of the appellant has been violated by the replying respondents therefore, the appellant is not an aggrieved person however reply on the grounds is as under:

ON GROUNDS:

- A. Incorrect. Detail reply has been given in Para No. 4 and 5 of the Facts. It is worth to mention that the Management Cadre Rules 2008 has clearly mentioned qualification for members of service BPS-17, BPS-18 and upward is as under:
 - i. MBBS/BDS or equivalent medical qualification from any institute recognized by PMDC and 25-32 years by initial recruitment.
 - ii. Master in Public Health/Health Administration/Health Management or equivalent qualification form any institute recognized by HEC or PMDC. While the appellant having DHMS which is Diploma and not MBBS Diploma thus as per rules he is not eligible for promotion to BPS-18 members of service.
- B. Incorrect. The appellant has been treated in accordance with law, rules and principle of natural justice.

- C. As in preceding para.
- D. As per Para-B of the grounds.
- E. Incorrect. Already replied in para B above.
- F. Incorrect. Already replied in para B above.
- G. Answering respondents also seek prior permission of this Honorable Tribunal 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

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

Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 05

DS (leg)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 291/2023

Dr. Asad Ullah Khan **Appellant**

VERSUS

Government of Khyber Pakhtunkhwa and others..... **Respondents**

AFFIDAVIT

I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No.291/2023 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.

further stated that the appeal is not placed ex parte for the defence struck off neither any cost imposed.

[Signature]
31/7/23
Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

Identified by:-

Addl: 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.

Attested

(MAHMOOD ASLAM)
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department

9/15/23

9/18/23

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa