

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

SERVICE APPEAL NO. 126/2023

Muhammad Islam.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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DGHS
for Laeeq Ahmad (FP)
Laeeq

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

Khyber Pakhtunkhwa
Service Tribunal

SERVICE TRIBUNAL PESHAWAR

Diary No. 6733

SERVICE APPEAL NO. 126 OF 2023

Dated 27/07/23

Muhammad Islam.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 TO 03

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 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.
10. That the appellant is estopped by his own conduct to file the instant appeal.

ON FACTS:

1. Pertains to record.
2. Correct. District Health Officer Battagram did advertise different posts of Para Medical staff including JCT (Radiology), JCT (Surgical), JCT (Pulmonology), PHC Tech(EPI) and EPI Vaccinator in Daily News Paper. The appellants alongwith other candidates applied for the post of PHC Tech (EPI) BPS-12.
3. Correct. The appellant was appointed as PHC Tech (Multipurpose) EPI BPS-12 vide Order dated 17/08/2021.
4. Correct to the extent that on complaints of irregularities respondent-No. 02 cancelled the appointment vide Office Order dated 23-08-2021 and a fact finding inquiry

committee comprising of Dr. Shah Faisal Khanzada (Addl: DG Hazara Division) & Mr. Hidayatullah (Deputy Director DGHS office) was ordered. The inquiry committee after conducting inquiry declared all the appointments in utter violation of rules. It is worth to mention that a complaint was also received through NAB against District Health Officer Battagram and a formal inquiry committee comprising of (i) Mr. Salah-ud-Din (PCS-SG BPS-20) and (ii) Dr. Rasool Jan (Management Cadre, BPS-20) was constituted against the then DHO Battagram Dr. Waseem Ahmad, on the allegations that he had appointed paramedical staffs without conducting ETEA test & not fulfilling of codal formalities of the recruitment. The inquiry committee after conducting thorough inquiry had also endorsed that irregularities have been committed while making the appointments such as constitution of DSC in violation of the rules and instructions of the Provincial Government, without conducting ETEA test and awarding experience marks in utter violation of rules and also recommended re-advertising the posts and making appointments in accordance with the laid down procedure as per law and rules. Thereafter, a show cause notice has been forwarded to the competent authority (Chief Minister, Khyber Pakhtunkhwa) for approval against the then DHO Battagram and other officers/officials. Copy of the fact finding inquiry and charge sheets along with statement of allegations and formal inquiry report are annexed as **Annex-A**

5. Correct to the extent of cancellation of all the appointment orders for the reasons mentioned in Para-4 above.
6. Pertains to court record.
7. Pertains to court record.
8. Incorrect, in-fact the then DHO Battagram was himself involved in the whole illegal appointment proceedings as already mentioned in Para-4 above.
9. Incorrect. An illegal act or acts do not create a single right, therefore, no vested right of the appellant has been violated by the replying respondents hence, the appellant is not an aggrieved person, however, reply on the grounds are as under.

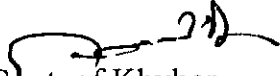
ON GROUNDS:

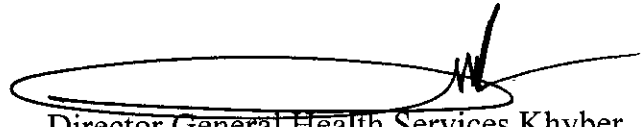
- A. Incorrect. The replying respondents acted as per law, rules and principles of natural justice.
- B. Incorrect. As per Para-A.
- C. Incorrect. Already explained in Para No. 4 of the Facts.
- D. Incorrect. Already explained in Paras No. 4 and 8 of the Facts.
- E. Incorrect. As per Para-A.
- F. Incorrect. As per Para-A.

G. Answering respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of final 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


Director General Health Services Khyber
Pakhtunkhwa Peshawar
Respondent No. 02


District Health Officer Battagram
Respondent No. 03

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Annex A

INQUIRY REPORT REGARDING ILLEGAL APPOINTMENT AT DHO OFFICE
BATTAGRAM

In compliance to the DGHS Khyber Pakhtunkhwa office order bearing No. 6028/DGHS, dated 23/08/2021, the inquiry report regarding recruitment of various cadres of Technician in District Health Officer Battagram is submitted as under:

BACK GROUND:-

District Health Officer Battagram was called along with his relevant staff and all recruitment process record on 30/08/2021 at 9:00 AM in the office of Additional Director General Health (Hazara Division). The documents of recruitment process were checked by both the inquiry officers and the following points were noted.

- Relaxation on ban of recruitment was issued to DHO Battagram by SO (General) Government of Khyber Pakhtunkhwa Health Department vide No. SOG(HD/1-2/P&T/2020/2744 dated 29/04/2021 for the following categories.

S/No	Designation	BPS	No. of posts
1	JPHCT (Multipurpose)	12	10
2	JCT (Surgical)	12	02
3	JCT (Radiology)	12	04
4	JCT (Pulmonology)	12	02
5	Vaccinator	06	01
	Total		19

1. JPHC/EPI

- 128 applicants were short listed for interview for JPHC/EPI, 10 candidates were selected among them (**Annex-A**)
- In the merit list of JPHC (EPI) the experience marks of Serial No. 2,3,4,5,6,8,9 & 10 was issued by MS DHQ Hospital / DHO Battagram where all of them have worked voluntarily and not under proper notification. At Serial No. 5,8,9,11 experience certificate was issued before receiving of diploma while at Serial No. 2, experience certificate by authorized institute was not found.
- 4 marks of experience were given to S. No. 2,3,4,6,8 & 9 while 7 marks are given to S. No. 5,10 accordingly.
- S. No. 7 is failed in interview having 3 marks (passing marks is 3.2) while he was selected.

Attested


2. PHCT (Surgical)

- 24 candidates were short listed and called for interview.
- Among them 02 were selected at S. No. 1 & 2 (Annex-B).
- The experience certificate were issued to both candidates by MS DHQH Batagram while both were worked as voluntarily and experience certificate to S. No. 1, was issued before receiving of diploma.
- Both of them were given 4 marks for interview.
- At S. No. 6 marks of diploma was placed in the 2nd division column instead of 1st division column.
- At S.No. 24 needs to be placed at S. No. 18 according to marks.
- The experience certificates to all of the candidates were issued by MS DHQH Batagram where they worked voluntarily.

3. JCT (Radiology).

- The approval from the competent authority for filling of vacant positions of JCT (Radiology) was given for 4 seats while total 05 candidates were selected (Annex-C).
- 08 candidates were short listed among 05 were selected.
- At S. No. 2 experience marks 4 were given, certificate was issued by MS DHQH Batagram. He was marked failed in interview receiving 2 marks while he was selected.
- At S. No. 3, seven (07) marks given as experience by MS DHQH Batagram before receiving of diploma.
- S. No. 4&5 both were failed in interview receiving 2 marks (passing marks is 3.2), but both were selected.
- Among them 03 candidates were called for interview where diplomas of Radiology were not found with the applicants.

4. JCT (Pulmonology)

- 09 candidates were short listed among them 02 were selected (Annex-D).
- At S. No. 1 diploma was not present but he was granted 20 marks of diploma as 1st division. He has no experience but have granted 4 marks of experience and kept him on top of the selected candidates

Attested
[Signature]

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and in the remarks it was mentioned that appointment letter will be issued after verification of testimonials.

- At S. No. 1,2,3 all of them failed in interview receiving 3,2&1 marks respectively while S. No. 2,3 were selected.

5. Vaccinator.

- 49 candidates were short listed for 01 sanctioned post among them 02 was selected (Annex-E).
- In short listed of 49 candidates, 02 disable quota candidates were selected which 4% disable quota and not 2% quota.
- In the S. No. 1, disable certificate it was mentioned that his right hand is handicap and he is able to work light duty/official work while he was selected as vaccinator for out- reach and fixed centre for vaccinator.
- At S. No. 2, 4 marks of experience were granted but having no experience after receiving of diploma. In his disability certificate it was mentioned that he is able only of official work only while he was selected as vaccinator for out-reach and fixed centre.

Statement of Dr. Waseem Ahmad (DHO Batagram)

According to his statement that I wrote a letter to Health Department for removal of ban on recruitment of the staff which was granted. I give advertisement through roper channel and wrote letter to DGHS for Departmental selection committee. The interview was conducted on 12/7/2021, minutes were wrote down.

I assigned Head Clerk Faisal for short listing of candidates and short listing of documents. He prepared list and asked DDHO Dr. Gul to kindly verify the list. Merit list was prepared and displaced on notice board. During the interview, two candidates got stay order from the court due to that the process of recruitment was stopped, I issued order for EPI Technician posts.

The higher authorities have issued a letter for cancellation of interview process so I followed the order and issued letter of cancellation of interview vide No. 1803-08 dated 28/08/2021 (Annex-F).

During the process of inquiry, I noted that there are many clerical mistakes in the merit list, I agree that, I did not do it willfully, I really on the staff who committed the mistakes.

I feel sorry for the process and will try to avoid in future (Annex-G).

Attested
Jaeed

Statement of Shah Faisal (Junior Clerk).

According to his statement, I have made merit list purely on the documents submitted to the office by candidates. Any discrepancy may be considered as clerical mistake as I have worked honestly and without any intention for favor my candidate illegal. The final merit list was handed over to me by selected committee and I have entered as it is duly signed from panel committee. The panel signed it after thoroughly examination. Nothing was added or subtracted by me from the said list (Annex-I)

Findings

- According to the statement of DHO and Junior Clerk (Batagram) advertisement was floated in daily Ajj on 01/06/2021, but they handed over the photocopy of advertisement was on plain paper and not on proper newspaper page (Annex-J).
- The recruitment process was done without involving of recruitment testing agencies for BPS-12.
- Short listing committee was not notified for the above mentioned posts.
- List of short listed candidates was not displayed on notice board nor on Health Department web site.
- Minutes of short listing committee was also not available.
- Minutes of the selection committee is attached as Annex-K.
- In the Radiology sanctioned vacant posts were 4 but selected 5 candidates.
- In the vaccinator sanctioned vacant posts was 1 while 2 were selected.
- According to 2% quota they should select 1 candidate instead of 2 (total candidates were 49).
- Most of the candidates were marked failed in the interview but selected by the committee.
- Most of the candidates have marked unauthorized experience before the receiving of diploma.
- All most all the selected candidates having no proper experience certificate but they were selected on the basis of their experience marks.
- According to the DHO statement there is clerical mistake and he feel sorry for the process and the mistake was done by his staff.
- According to Junior Clerk who prepared the whole process stated that it is clerical mistake and final merit was handed over by selection committee.

Attested
Faisal

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Better copy

- Verification of the experience certificates of the candidates was verified by the MS DHQH Batagram wherein it is mentioned that the issuing authority were Dr. Muhammad Rahim Khan DMS Admn and Dr. Rashid Hamayun DMS Services vide letter No. 3983/Estab/General dated 01/09/2021 (Annex-L).

CONCLUSION / RECOMMENDATIONS

- The whole process was done without fulfilling the codal formalities of the recruitment as pointed out in the findings.
- According to the above findings the recruitment process must be cancelled and the posts shall be re-advertised in the best interest of public and all codal formalities must be followed in order to ensure the merit and transparency.
- DHO being the chairman and Junior Clerk are responsible for the whole false and bogus recruitment process of all these unjustified mistakes must be dealt with under the E&D rules 2011.
- Strict disciplinary action must be taken against Dr. Muhammad Rahim DMS Services and Dr. Rashid Hamayun DMS (Admn) DHQ Hospital Batagram regarding their negligence and misuse of their official power by issuing experience certificate without any proper departmental notification/orders.

sd/2-2

Dr. Hidayat Ullah,
Deputy Director (Coord) DGHS KP

sd/2-2

Dr. Faisal Khanzada,
ADG (Hazara Division) DGHS.

Attested
[Signature]

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
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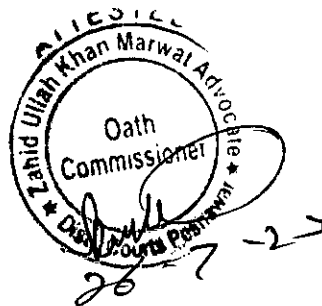
Affidavit

I, Dr. Adnan Shahzad Litigation Officer DHO office Battagram, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.

Deponent

Cell # 03459344125

CNIC # 15602-0149073-





**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
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Dr. Adnan Shahzad Litigation Officer DHO office Battagram, is hereby authorized to submit parawise comments in case Service Appeal No. 126 to 135/2023 titled Muhammad Islam & 09 others VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar.**