

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 498 / 2019

FAZLI WAHID

VS

HEALTH DEPTT:

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APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 498 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 617

Dated 12/4/19

Mr. FAZLE WAHID, Behishti (BPS-1),
District Headquarter Hospital, District Bajaur at Khar

..... APPELLANT

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. The Director Health Services Merged Area, Warsak Road, Peshawar.
6. The District Surgeon/Health officer, District Bajaur at Khar.
7. The Medical Superintendent, District Headquarter Hospital, Bajaur.

..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING THE APPELLANT AGAINST THE POST OF CLINICAL TECHNICIAN (BPS-12) AND AGAINST THE IMPUGNED PARAMEDICS SERVICE RULES OF THE RESPONDENT DEPARTMENT NOTIFIED VIDE DATED 10.5.2016 WHEREBY NO PROMOTION QUOTA HAS BEEN ALLOCATED FOR THE IN SERVICE CLASS-IV EMPLOYEES/APPELLANT OF THE RESPONDENT DEPARTMENT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filed to-day
12/4/19
Registrar

PRAYER:

That on acceptance of this Service appeal the respondents may kindly be directed to amend the paramedics service structure Notified on 10.5.2016 to the extent of allocation of proper promotion quota for those class-iv employees including appellant who have the requisite qualifications for the post of Clinical Technician (BPS-12) **OR** the respondents may kindly be directed to adjusted the appellant against the post of Clinical Technician (BPS-12) in light of the Judgment of Honorable Peshawar High Court passed in W.P No.102/2011 and in light of the Notification dated 28.2.2012 issued by the respondent Department with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

FACTS:

Brief facts which give rise to the instant appeal is as under:-

1. That appellant is the employee of the Health Department and was appointed as Behishti (BPS-01) vide order dated 20.08.2003. Copy of the appointment order is attached as annexure **A.**
2. That the appellant is serving the respondents Department since 2003 as per their job description and during the course of his service the appellant acquired the diploma in Health Technology. Copy of Educational Testimonials is attached as annexure..... **B.**
3. That appellant inspite of having higher educational qualification as well as professional qualification of Diploma in Health Technician from medical faculty of Khyber Pakhtunkhwa have no prospects of promotion in the field of paramedics. That for the purpose of promotion the appellant and other colleagues of the appellant who have diploma in the relevant fields time and again requested for their promotion/adjustment against the post of Clinical Technician (BPS-12) but of no avail.
4. That according to the impugned paramedics service Notified on 10.5.2016 no promotion quota has been allocated for those class-iv employees including the appellant who have acquired the requisite diploma from medical faculty of Khyber Pakhtunkhwa and that is why the appellant and other class-iv employees have continuously been deprived from promotion. Copy of the impugned service Rules are attached as annexure **C.**
5. That colleagues of the appellant finally knocked the door of august Peshawar High Court Dar Ul Qaza Bench in writ petition No.102/2011 titled Aziz Ur Rehman VS Govt: of Khyber Pakhtunkhwa. That vide judgment dated 13.10.2011 the august High Court Dar Ul Qaza Bench directed the respondents to redress the grievance within a period of one month. That where after those employees filed COC petition and during the pendency of the said COC petition the respondents adjusted the class-IV employees against the posts of Clinical Technician (BPS-12) vide Notification dated 28.2.2012. Copies of the judgment and memo of COC petition and Notification/letter are attached as annexure **D, E and F.**
6. That appellant being similarly placed person/employee of the respondent Department also requested the respondents for his adjustment/promotion but no reply has been received so far. That feeling aggrieved the appellant filed Departmental against the Rules notified vide dated 10.5.2016 and against the inaction of

the respondents by not adjusting the appellant against the post of Clinical Technician (BPS-12) in light of the august Peshawar High Court judgment and Notification of the respondent department. Copy of the Departmental appeal is attached as annexure

7. That the appellant having no other efficacious, adequate and alternate remedy, approach this Honourable Tribunal on the following grounds amongst others.

GROUND:-

- A. That by not adjusting the appellant on the relevant post of clinical Technician (BPS-12) in light of the notification dated 28.2.2012 is against the Law, Facts, norms of natural justice and materials available.
- B. That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents are clearly violating Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C. That the respondents have not acted in accordance with law and the rules governing on the subject by not adjusting/promoting the appellant to his respective paramedic post for which he is fully eligible and entitle.
- D. That according to the notification dated 28.2.2012 already issued by the respondents the appellant is fully eligible and entitled to be adjusted/ promoted on the post of Clinical Technician (BPS-12).
- E. That, the petitioner is fully entitled to be benefited from the Notification dated 28.2.2012 in the light of various judgments passed by the Apex Supreme Court of Pakistan especially reported in **2009 SCMR page 01**.
- F. That the appellant has served the Department for a long period with unblemished service record, therefore, they have the right to be adjusted according to his qualification.
- G. That the inaction of the respondent by not adjusting the appellant according to his qualification and not allocating proper promotion quota in the impugned service Rules dated 10.5.2016 is against Article-38 (e) of the constitution of Pakistan which enshrines **" that the state shall reduce disparity in the income and earnings of the individual including persons in the service of Pakistan"**.

H. That any other grounds will be raised at the time of arguments with prior permission of this Honourable Tribunal.

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

Dated: 5.4.2019

Appellant

FAZLE WAHID

Through
NOOR MOHAMMAD KHATTAK


MUHAMMAD MAAZ MADNI

&

SHAH ZULLAH KHAN
Advocates High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

C.M. NO. _____/2019

IN

APPEAL NO. _____/2019

FAZLE WAHID

VS

HEALTH DEPTT:

APPLICATION FOR RESTRAINING THE
RESPONDENTS FROM APPOINTMENT ON THE
POSTS OF CLINICAL TECHNICIAN (BPS-12) TILL
THE DISPOSAL OF THIS APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal before this august service Tribunal in which no date is fixed till now.
- 2- That appellant has filed the above mentioned appeal for adjustment against the post of Clinical Technician (BPS-12).
- 3- That the respondent Department advertised the said post in daily newspaper "Aaj" vide dated 09.04.2019 in violation of law and rules.
- 4- That all the three ingredients necessary for the stay is in favor of the petitioner.
- 5- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore, humbly prayed that on acceptance of this application the respondents may very kindly be restrained from appointment against the post of Clinical Technician (BPS-12) till the disposal of this appeal.

APPELLANT

FAZLE WAHID

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

A-6

**OFFICE OF THE AGENCY SURGEON BAJAUR
AT KHAR**

Appointment letter

Consequent upon the approval of Departmental Selection Committee held on 7/7/2003 and 8/7/2003.

Mr./Miss. **Fazle Walid** S/O **Wazir Rehman**
Resident of: **Samsai Tehsil: Khar Bajaur Agency**

Is hereby appointed as **Behishti (BPS:01)** plus usual allowances as admissible under the rules.

His/ Her appointment will be subject to the following terms and conditions:-

1. That your appointment is on contract basis for period of three years and your services are liable to be terminated at any time with out any notice or resign being assigned.
2. That you are declared medically fit for Govt: service.
3. The post is not transferable, and you must serve for three years on the said post.
4. That you will be governed by such and orders as may be issued by the government of NWFP, from time to time for the category of the Government servant to which he/she belong.
5. That if you wish to resign, at any time, your will resign in written within 30 days notice or you will be forfeit one month pay in lieu thereof and will continue to serve the government till the acceptance of your resignation by the competent authority.
6. That you will be posted any where in Bajaur agency.
7. That you will not be entitled to any TA/DA for Medical examination and joining the first appointment.
8. The offer is subject to the availability of vacant post.
9. If you accept the post the post on above terms and conditions you should report to the Office of Agency Surgeon Bajaur at Khar Within 15 days. The offer will be cancelled if you fail to report for duty.

Sd/-----
AGENCY SURGEON
BAJAUR AT KHAR

No. 3362-66 /C-5/BJR

Dated. 20/8/2003

Copy forwarded to the:-

1. Political Agent Bajaur Chairman Departmental Selection Committee.
2. Deputy Director (Admn) Directorate Health Services FATA NWFP Peshawar
3. DMS, AHQ: Hospital Khar.
4. Agency Account Officer Bajaur at Khar.
5. Official Concerned.

For information please

Alberted
Dr. Kafar Ullah
M.B.B.S. R.M.P
Medical Officer AHQ Hospital
Bajaur Khar.

22
AGENCY SURGEON
BAJAUR AT KHAR

B-7

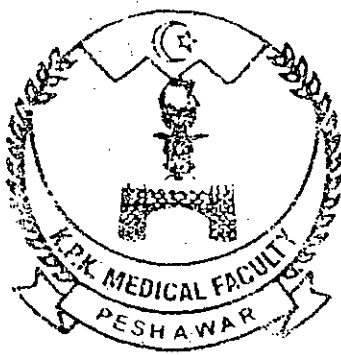
Serial No 559

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Roll No 98343

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KHYBER PAKTUNKHWA MEDICAL FACULTY PESHAWAR PAKISTAN



Diploma In HEALTH Technology

SESSION 6-2012

This is to certify that Mr. Miss. Mrs. FAZLE WAHID Son / Daughter of

Mr. WAZIR RAHMAN Of Batch No. 3RD Bearing

Registration No MR/15/Health/A-Peshawar Has passed the examination of Two years diploma

In the year 6-2012 He / She obtained 758 Marks out of 1400

He / She has been Placed in C Grade.

Prepared by: *[Signature]*

Checked by: *[Signature]*

Verified by: *[Signature]*

[Circular Stamp]

[Signature]
Secretary,
Khyber Pakhtunkhwa Medical Faculty
Peshawar Pakistan

Attested
[Signature]
M.B.B.S R.M.P.
Medical Officer, Q Hospital
Peshawar, K.P.

UNIVERSITY OF MALAKAND

PAKISTAN

DETAILED MARKS CERTIFICATE

S.No.

34316

8

Name: FAZLI WAHID

Private Candidate Bajaur Agency

Father's Name: WAZIR RAHMAN

Registration No. 2005670096



Roll No. 37479

B.A PART-II ANNUAL EXAMINATION 2009

Subject Name	Total Marks	Marks Obtained	Remarks
ISLAMIC STUDIES(E)	75	54	PASSED
PASHTO	75	35	PASSED
ENGLISH(C)	75	24	PASSED
PAK. STUDY	40	14	PASSED
BA PART-I MARKS	285	138	PASSED
Subject Passing Percentage 33 (Theory & Practical Separately) 1. Aggregate Percentage 36		550	265

Examination Held From Oct 08 To Oct 31, 2009

Result Declared on 07-Dec-2009



Errors and Omissions are subject to subsequent rectification

Examination was taken as a whole/in parts

Date of Issue: 07-Dec-2009

Prepared by: Amjad Shahzad

Controller of Examinations
University of Malakand

Attested
Dr. Zafar Ullah
M.B.B.S. R.M.P.
Medical Officer AHQ Hospital
Bajaur Khar.

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
GAZETTE

C-9

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 10TH MAY, 2016

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Peshawar dated the 10th May, 2016.

No.SOI-III/HD/3-5/2014 -In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of all Notifications issued in this behalf by the Health Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the Appendix to the posts of Paramedical Staff in the Health Department specified in column 2 of the said Appendix.

APPENDIX

S. No.	Nomenclature of the post.	Qualification for appointment by initial recruitment.	Age limits.	Method of recruitment.
	2	3	4	5
1	Principal Technologist (BS-20)			By promotion, on the basis of seniority-cum-fitness, from amongst the Chief Technologists and Chief PHC Technologists with five years service in BS-19 or seventeen years service in BS-17 and above as such in the relevant technology.
	(i) Principal Clinical Technologist Dental; (ii) Principal Clinical Technologist Pharmacy; (iii) Principal Clinical Technologist Radiology; (iv) Principal Clinical Technologist Pathology;			

ATTESTED

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	<p>(v) Principal Clinical Technologist Anesthesia; (vi) Principal Clinical Technologist Cardiology; (vii) Principal Clinical Technologist Surgical; (viii) Principal Clinical Technologist Dialysis; (ix) Principal Clinical Technologist Physiotherapy; (x) Principal Clinical Technologist Pulmonology; (xi) Principal Clinical Technologist Gastroenterology; and (xii) Principal Clinical Technologist Ophthalmology / otorhinolaryngology; and</p> <p><u>Principle PHC Technologist</u></p> <p>(i) Principal PHC Technologist (Multi Purpose); and (ii) Principal PHC Technologist (MCH).</p>			
2	<p><u>Chief Technologist</u> <i>CS-18</i></p> <p>(i) Chief Clinical Technologist Dental; (ii) Chief Clinical Technologist Pharmacy; (iii) Chief Clinical Technologist Radiology; (iv) Chief Clinical Technologist Pathology; (v) Chief Clinical Technologist Anesthesia; (vi) Chief Clinical Technologist Cardiology; (vii) Chief Clinical Technologist Surgical; (viii) Chief Clinical Technologist Dialysis; (ix) Chief Clinical Technologist Physiotherapy; (x) Chief Clinical Technologist Pulmonology; (xi) Chief Clinical Technologist Gastroenterology; and (xii) Chief Clinical Technologist Ophthalmology/ Otorhinolaryngology; and</p>			<p>By promotion, on the basis of seniority-cum-fitness, from amongst Senior Technologists and Senior PHC Technologists with seven years service in BPS-18 or twelve years service in BPS-17 and above as such in the relevant technology.</p>

ATTEND

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<p>(xi) Clinical Technicians Gastroenterology; and (x) Clinical Technicians Pulmonology; (ix) Clinical Technicians Physiotherapy; (viii) Clinical Technicians Dietetics; (vii) Clinical Technicians Surgical; (vi) Clinical Technicians Cardiology; (v) Clinical Technicians Anaesthetics; (iv) Clinical Technicians Pathology; (iii) Clinical Technicians Radiology; (ii) Clinical Technicians Pharmacy; (i) Clinical Technicians Dentist;</p> <p>Technician (RS-15)</p>	<p>(i) Bachelors Degree; and Medical Faculty Khyber the same is registered with the recognized institution; provided that Paramedical Technicians from any Faculty or Diplomas in the relevant from Khyber Paramedical Medical the relevant Paramedical Technologia a recognized Board with Diplomas in School Certificate with Science from least Second Division Secondary Technicians BHC Technicians: At</p>	<p>18-30 Years</p>	<p>By Initial recruitment</p>
<p>Senior BHC Technicians (MCH): and Ophthalmologist); and (xii) Senior Clinical Technicians Ophthalmology - Otorhinolaryngology; and (xi) Senior Clinical Technicians; (x) Senior Clinical Technicians Pulmonology; (ix) Senior Clinical Technicians Physiotherapy; (viii) Senior Clinical Technicians Dietetics; (vii) Senior Clinical Technicians Surgical; (vi) Senior Clinical Technicians Cardiology; (v) Senior Clinical Technicians Anaesthetics; (iv) Senior Clinical Technicians Pathology; (iii) Senior Clinical Technicians Radiology; (ii) Senior Clinical Technicians Pharmacy; (i) Senior Clinical Technicians Dentist;</p> <p>Senior Technicians (RS-14)</p>			<p>least two years service as such in the relevant technology. amongst the Technicians and BHC Technicians with a BA promotion on the basis of seniority-cum-fitness from</p>
<p>Chief BHC Technicians (xiii) Chief Clinical Technicians Ophthalmology; and (xii) Chief Clinical Technicians Otorhinolaryngology; and</p>			

KHYBER PAKHTUNKHWA GOVERNMENT CASSETTE EXTRAFORDINARY, 10, MAY, 2016 321

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952 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 10th MAY, 2016

<p><u>PHC Technician</u></p> <p>(i) PHC Technician(Multi-Purpose); and (ii) PHC Technician (MCH).</p>	<p>(ii) PHC Technician (MCH): Secondary School Certificate with at least Second Division in Science from a recognized board and Diplomas of LHV and Midwifery from recognized Nursing Examination Board.</p>		
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SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA,
HEALTH DEPARTMENT.

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OFFICE OF THE SECRETARY TO GOVT. OF PAKHTUNKHWA, DEPARTMENT HEALTH DEPARTMENT

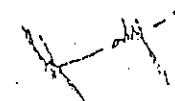
Encl. No. & Date even

Encl. No: SOH-III/D-60/2016 (Paramedics/Nurses/Service Rules)

Dated Peshawar, 17-05-2016

Copy forwarded for information and necessary action to:

1. The Director General Health Services Khyber Pakhtunkhwa.
2. The Director Provincial Health Services Academy, Khyber Pakhtunkhwa
3. All District Health Officers, Khyber Pakhtunkhwa.
4. The Registrar Khyber Medical University, Peshawar.
5. The Director Health Services FATA.
6. All Hospital Directors/Medical Directors of Autonomous Institutions in Khyber Pakhtunkhwa.
7. All Medical Superintendents DHO/THQ Hospitals of Khyber Pakhtunkhwa.
8. All the Principals of Medical Colleges in Khyber Pakhtunkhwa.
9. The Dean PMU Peshawar.
10. The Chief HSRU Health Department Khyber Pakhtunkhwa.
11. The Director Information Khyber Pakhtunkhwa.
12. The Deputy Director (I.T) Health, Khyber Pakhtunkhwa.
13. The Secretary, Medical Faculty, Khyber Pakhtunkhwa, Peshawar.
14. The Principal, Post Graduate Paramedical Institute, Peshawar.
15. The Principal, Post Graduate College of Nursing, Hayatabad Peshawar.
16. The Controller, Nursing Examination Board, Peshawar.
17. PSD to Chief Secretary Khyber Pakhtunkhwa.
18. PS to Additional Chief Secretary (FATA) Peshawar.
19. PS to Secretary to Governor Khyber Pakhtunkhwa.
20. PS to Secretary to Chief Minister Khyber Pakhtunkhwa.
21. PS to Secretary to Government of Establishment Department.
22. PS to Secretary to Government of Finance Department.
23. PS to Secretary to Government of Law Department.
24. PS to Secretary, Public Service Commission, Khyber Pakhtunkhwa.
25. PS to Senior Minister for Health Department.
26. The Manager, Government Printing Press, Peshawar.


 (Asfandyar Khattak)
 Deputy Secretary-II

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GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 15th May, 2018

NOTIFICATION.

No. SOH-III/8-60/2018. The competent authority has been pleased to approve the proposal to enhance the ratio/restructuring of Paramedics staff of Health Department in the higher grades for availing promotion due to anomalous allocation in different scales as per following tables.

Scale-wise Existing ratio of posts of Paramedical Staff			Scale-wise Proposed ratio of posts of Paramedical Staff			Number of Posts
S.No	BPS	Percentage	S.No	BPS	Percentage	
1.	Posts in BPS-12	80%	1.	Posts in BPS-12	40%	5818
2.	Posts in BPS-14	12%	2.	Posts in BPS-14	30%	4362
3.	Posts in BPS-16	3.5%	4.	Posts in BPS-16	20%	2908
4.	Posts in BPS-17	2.5%	5.	Posts in BPS-17	8.0%	1164
5.	Posts in BPS-18	1.85%	6.	Posts in BPS-18	1.95%	284
6.	Posts in BPS-19	0.03%	7.	Posts in BPS-19	0.04%	05
7.	Posts in BPS-20	0.04%	8.	Posts in BPS-20	0.01%	01
		100%	Total:		100%	14542

13700/-
400
340
177
12

2. The expenditure involved shall be debatable to function cum object classification: 07-Health-076-Health-Administration-0761-Administration-076101-Administration current Financial Year 2017-18.

3. The Administrative Department will amend service rules through SSRC accordingly.

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst: No. SO(FR)FD/7-3/2018/17401/H

Dated: 11-05-2018

Copy forwarded to Accountant General, Khyber Pakhtunkhwa Peshawar for information & necessary action.

Section Officer (FR)
Finance Department

Dated: 15-05-2018

No. SOH-III/8-60/2018.

Copy forwarded to:-

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.

BEFORE THE PESHAWAR HIGH COURT, BENCH
AT MINGORA/DAKUL QAZA SWAT

D-17

V.P.No. 102 2011

- 1) Aziz Ur Rahman Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 2) Muhammad Khan Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 3) Bakht Munir Sweeper D.H.Q-Hospital Timergara, Dir Lower.
- 4) Taj Muhammad Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 5) Bakht Said Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 6) Anjad Ali Khan Mali D.H.Q Hospital Timergara, Dir Lower.
- 7) Javed Khan Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 8) Umar Sadiq Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 9) Munawar Said Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 10) Noor Khitab Ward Attendant D.H.Q Hospital Timergara, Dir Lower.

...Petitioners

VERSUS

- 1) The Govt. of Khyber Pukhtoonkhwa through Secretary Health Civil Secretariat, Peshawar.
- 2) Director General Health Services, Khyber Pukhtoonkhwa, Peshawar.
- 3) Executive District Officer (Health) Dir Lower.
- 4) District Account Officer Dir Lower.
- 5) Medical Superintendent DHQ Hospital Timergara Dir Lower.
- 6) Nasir Ali S/o Nadar Khan R/o Village Bajawro, P.O Tehsil Timergara, District Dir Lower.
- 7) Zubair Ali S/o Muhammad Rasool Khan R/o Village Danwa, Tehsil Timergara, District Dir Lower.

...Respondents

731
TODAY

Subl Registry

2011

ATTESTED TO BE TRUE COPY

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18

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.

JUDICIAL DEPARTMENT

W.P. No. 102 of 2011

JUDGMENT

Date of hearing 13.10.2011

Appellant/Petitioner: (Azizur Rehman & others) by Mr. Sultan Muhammad Ullah
Respondent: (Govt. of P.Pk) by Mr. Ghousul Karim Khan Advocate
M.A.

YAHYA AFRIDI, J.: Azizur Rehman

alongwith his nine other petitioners have sought the constitutional jurisdiction of this Court seeking that;

"for the aforementioned reasons, it is, therefore, respectfully prayed that on acceptance of this writ petition this august may graciously be pleased to declare the acts and actions of the respondents and the impugned appointment order dated 28.7.2011 and 9.7.2011 as without lawful authority and hence of no legal effect and this august Court may further pleased to set aside the same and direct respondents No.1 to 5 to act in the matter in accordance with law and to adjust petitioners against posts announced."

2. The petitioners may be categorized in two groups; petitioner No.1 to petitioner No.6, who are presently serving as sweepers (BPS-1) at DHQ Hospital Timergara, Dir Lower ("Group-1") and petitioner No.7 to petitioner No.10, who are serving as

[Signature]

[Signature]

2

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Ward Attendance (BPS-2) at (BPS-1) at DHQ Hospital Timergara, Dir Lower ("Group-2").

3. The grievance of the petitioners in Group-1 is that the policy decision determined by the Government in its high powered meeting dated 12.7.2006 to resolve the problems of paramedic employees of the province have not been complied with and thus adversely affected the petitioners prospects of promotion to 'Ward Orderlies', 'Chokidar', 'Malis' and other class-IV posts. It is further asserted that eight persons had been appointed on the said posts without even fulfilling the essential cordial formalities provided under the law. Thus they have a two fold grievance;

Firstly, the petitioners be appointed to the upgraded post on seniority basis and

Secondly, the illegal appointments made to the said posts be set aside.

4. Now moving on to the petitioners in Group-2; their grievance is that they have not been promoted to the post of Junior Clerk (BPS-7) on seniority basis on the 33% quota determined under Rule 3 of the N.W.F.P. Civil Servants (Appointment, Promotion

3

20

~~17/10~~

and Transfer) Rules, 1989 ("Rules") as amended vide notification dated 4.2.2009. These petitioners further urged that other Naib Qasids and Sweepers, similarly placed as the petitioners, have been promoted to the post of Junior Clerk (BPS-7), while the petitioners have been discriminated against. In addition there to, they further urged that the government has recently advertised fresh appointments to the post of Junior Clerks in complete violation of the Rules.

5. Lest this Court passes any findings on the merits of the present case so as to prejudice the case of the parties, suffice to it to state that the petitioners are aggrieved of being not considered for promotion to the higher grade and their grievance needs to be first considered, addressed and resolved by the government.

6. As far as the jurisdiction of this constitutional Court to entertain matters seeking to be considered for promotion of a civil servant, we are afraid Article 212 of the Constitution bars our jurisdiction to entertain the said matter and the same exclusively falls within the domain of the Services Tribunal. Guidance is

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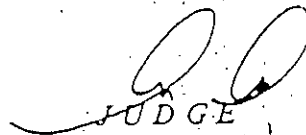
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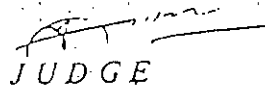
sought from the judgment of the Apex Court in

Muhammad Anees's case (PLD 2006 SC 539).

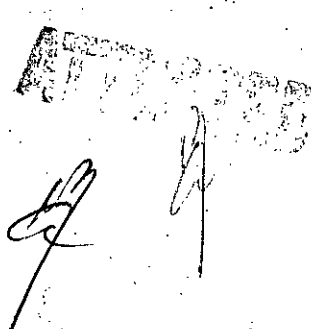
6. In the peculiar circumstances of the present case where the grave grievances of the petitioners require urgent redressal, we instead of dismissing the present petition, treat the same as a representation before the departmental authority and direct the office to send this case to the Secretary Health, Government of Khyber Pukhtoon Khwa for decision in writing rendering valid reasons thereof to be made within a period of one month, if not earlier, from the receipt of this judgment. It is further directed that the decision so made should be sent to the Additional Registrar PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT.

7. This petition is disposed of in the above terms.


JUDGE

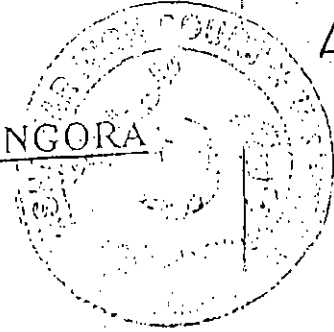

JUDGE

Announced.
Di.13/10/2011.



BEFORE THE PESHAWAR HIGH COURT MINGORA

BENCH AT MINGORA SWAT



E-(22)

- 1) Aziz-Ur-Rehman Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 2) Muhammad Khan Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 3) Bakht Munr Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 4) Taj Muhammad Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 5) Bakht Said Sweeper D.H.Q Hospital Timergara, Dir Lower.
- 6) Anjad Ali Khan Mali D.H.Q Hospital Timergara, Dir Lower.
- 7) Javed Khan Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 8) Umar Sadiq Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 9) Munawar Said Ward Attendant D.H.Q Hospital Timergara, Dir Lower.
- 10) Noor.Khitab Ward Attendant D.H.Q Hospital Timergara, Dir Lower.

ATTESTED
M
Registrar
Peshawar High Court

..... Petitioners

VERSUS

1. Secretary Health, Govt of Khyber Pakhtoonkhwa, Civil Secretariat, Peshawar.
2. Director General Health services Khyber Pakhtoonkhwa.
3. District Coordination Officer Dir Lower at Timargara.
4. Executive District Officer (Health) Dir Lower.
5. Medical Superintendent D.H.Q Hospital Timergara, Dir Lower.

..... Respondents

Application Under Article 204 Constitution
Of the Islamic Republic of Pakistan, 1973

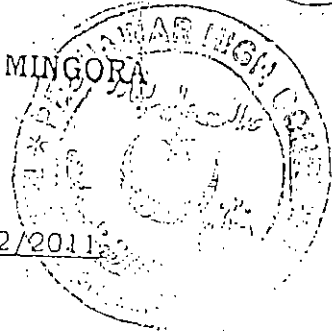
Respectfully Sheweth:

- 1) That a Writ Petition No. 102 of 2011 was decided by this Honorable Court vide order dated 13-10-2011 wherein it was held "in the peculiar

P.T.O

23

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, MINGORA
BENCH
(DAR-UL-QAZA), SWAT.
(Judicial Department)



C.O.C. No.01/2012 in W.P. No. 102/2011

JUDGMENT

Date of hearing: 11.01.2012.

Appellant-Petitioner (Azzur Rehman and others) by Mr. Asghar Ali Advocate
Respondent (Secretary Health and others) by Mr. Ghanoush Khan A.A.G.

MAZHAR ALAM KHAN MIANKHEL, J. The petitioners through instant petition seek implementation of the judgment dated 13.10.2011 of this Court by initiating contempt proceedings against the respondents.

2. The learned counsel for the petitioners was heard and record of the case was perused.

3. The learned A.A.G, present in the Court in some other case, accepted the notice of this petition and thereafter sought some time to inquire about the matter involved in this petition from the concerned authorities. Later on, the learned A.A.G. informed the court that the appeal of the present petitioner is under consideration before the competent authority

ATTESTED
M
Clerk

ATTESTED
[Signatures]

Accepted



MOST IMMEDIATE
COURT MATTER.

GOVERNMENT OF KHYBER PAKHTUNKHWA.

HEALTH DEPARTMENT.

No. SOH(LIT.I)12(1)-47/2011

Dated Peshawar the 29th December, 2011

25

To

1. The Director General,
Health Services, Khyber Pakhtunkhwa,
Peshawar.
2. The Executive District Officer-Health,
Dir Lower.

Subject: ORDER/JUDGMENT DATED 13/10/2011 PASSED BY THE
PESHAWAR HIGH COURT MINGORA BENCH (DARUL
QAZA) SWAT IN WRIT PETITION NO. 102/201 MR. AZIZ
UR REHMAN ETC VERSUS GOVERNMENT OF KHYBER
PAKHTUNKHWA AND OTHERS.

I am directed to refer to this Department letter of even number dated 28/11/2011 and your letter 10788, dated 22/12/2011 and letter No. 10521/EDO-Health Dir Lower, dated 01/12/2011, on the subject noted above and to state that your comments/report do not cover the requirements as per promotion, posting/transfer rules, 1989, therefore you are once again requested to prepare report as per rules/policy so that the issue could be placed before the Hon' able Secretary Health Khyber Pakhtunkhwa for necessary decision. Meanwhile no action be taken/initiate and do not disturb the petitioners till the final decision of the Secretary Health in the matter/final decision of the Peshawar High Court Mingora Bench Swat, otherwise, any adverse orders passed by the Peshawar High Court Mingora Bench Swat your office will be held responsible.

SECTION OFFICER (LIT.I)

Endst. No. and date a.a.

Copy forwarded to:-

1. The Section Officer-III, Govt. of Khyber Pakhtunkhwa, Health Department, Peshawar with the request to direct the Executive District Officer-Health, Dir Lower to submit report as per rules/policy and placed before the Hon' able Secretary Health to decide the case on merit.
2. The Addl. Advocate General, Peshawar High Court Mingora Bench Swat.
3. The P.S to Secretary Health, Khyber Pakhtunkhwa, Peshawar.

SECTION OFFICER (LIT.I)



Government of Khyber Pakhtunkhwa
Health Department

F-26

No.SOH(Lit.I)12(1)-47/2011.
Dated Peshawar, the 26th February, 2012.

*SO II
Compliance of Courts
order as per
[Signature]*

To

- The Director General,
Health Services, Khyber Pakhtunkhwa,
Peshawar
- The Executive District Officer-Health,
Dir Lower

Subject:-

COMPLIANCE OF PESHAWAR HIGH COURT'S ORDER IN WP NO.102/11 & PROCEEDINGS IN CONTEMPT PETITION NO.01/2012.

I am directed to refer to the Peshawar High Court's orders passed in WP No.102/11 titled Azizar Rehman etc. Versus Government of Khyber Pakhtunkhwa Health Secretary and others dated 13/10/11 and subsequent orders of the apex court in contempt petition No. 01/2012 dated 11/01/2012 wherein the apex court has directed the Provincial Government, Health Department to resolve the issue within a period of one month positively. Copies of the aforesaid orders are enclosed.

12/3

To comply the superior court's orders in letter and spirit, the competent authority has been pleased to approve the adjustment of petitioners as under:-

S.No.	S.No., name & designation of petitioners in WP No.102/11.	Required adjustment against the posts	Remarks/Justification
1.	Petitioners at S.No.1 to 5 (excluding S.No.2) are Muslim Sweepers in BPS-01	Ward Attendant (BPS-02)	Adjustment/appointment to be made on the basis of Establishment & Admn.Deptt. Notification No.SOIV/4(4)89/Vol.II dated 13/5/90. Copy enclosed for ready reference.
2.	Petitioner at S.No.2 also a Muslim Sweeper in BPS-01.	Driver (BPS-01)	Petitioner is in possession of a valid driving licence plus experience/ commendation certificate awarded by MS DHQ Hospital Dir Lower and also working as Driver for the last one year.
3.	Petitioner at S.No.6 Amjid Ali Khan Mali(BPS-01)	Junior Clerk (BPS-07)	Petitioner is in possession of FA certificate plus experience certificate awarded by MS DHQ Hospital Dir Lower and also working as Junior Clerk for the last one year.
4.	Petitioner at S.No.7(Javed Khan) is Ward Attendant (BPS-02)	Dental Technician (BPS-09)	Petitioner is in possession of diploma in the relevant field awarded by the KPK Medical Faculty plus experience/commendation certificate awarded by MS DHQ Hospital Dir Lower and also working as Dental Technician for the last 03 years.
5.	Petitioner at S.No.8 Umar Sadiq Ward Attendant (BPS-02)	Laboratory Technician (BPS-09)	Petitioner is in possession of diploma in the relevant field awarded by the KPK Medical Faculty plus experience/commendation certificate awarded by MS DHQ Hospital Dir Lower and also working as such for the last one year.
6.	Petitioner at S.No.9 Munawar Saeed Ward Attendant (BPS-02)	Anesthesia Technician (BPS-09)	Petitioner is in possession of diploma in the relevant field awarded by the KPK Medical Faculty plus experience/commendation certificate awarded by MS DHQ Hospital Dir Lower and also working as Anesthesia Technician for the last two years.
7.	Petitioner at S.No.10 Noor Khitab Ward Attendant (BPS-02)	Health Technician (BPS-09)	Petitioner is in possession of diploma in the relevant field awarded by the KPK Medical Faculty plus experience/commendation certificate awarded by MS DHQ Hospital Dir Lower and also working as Health Technician for the last one year.

[Signature]

27

The competent authority desires to adjust/appoint the aforesaid petitioners against the posts mentioned in Col. 03 of the table above under intimation to this department enabling us to apprise the Hon'ble Peshawar High Court Mingora Bench (Darul Quza), Swat without further loss of time.

[Signature]
SECTION OFFICER (LIT.) - 9/02/012

Encl. No. & Date: EVEN

- Copy forwarded to the:
1. Additional Registrar, Peshawar High Court, Mingora Bench Swat with reference to his letter No. 910/Judl
 2. Additional Advocate General, Peshawar High Court Mingora Bench, Swat.
 3. P/S to Secretary Health, Khyber Pakhtunkhwa Peshawar.
 4. Deputy Secretary-II, Health Department, Peshawar.

SECTION OFFICER (LIT.)

[Stamp]

[Signature]

پشاور ایسٹ آباد اور اسلام آباد سے بیک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

روشن کنل کی ضمانت، آج کا نصب العین

روزنامہ

پشاور
پاکستان

اج

ایڈیٹر
عبدالواحد یوسفی

صفحات 12

جلد 30 | مئی 9 اپریل 2019 | شعبان المعظم 1440 | قیمت 20 روپے - بولے ای آرکی | شماره 92

27/A

آسامیاں خالی ہیں

حکومت باجوڑ کے مختلف ہسپتالوں میں ذہنی آسامیاں خالی ہیں جن کو پر کرنے کیلئے خواہشمند حضرات سے درخواستیں مطلوب ہیں درخواست سادہ کاغذ پر ہمدردی سے تصدیق شدہ اسناد و فٹرز کو 25 اپریل 2019 تک پہنچ جانی چاہئیں۔

نمبر شار	نام آسامی	سکیل	تعلیمی قابلیت	عمر
1	اسٹریٹریٹیشن	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
2	سرجیکل فیکلٹی	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
3	پیتھالوجی فیکلٹی	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
4	ریڈیالوجی فیکلٹی	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
5	(بی ایچ سی) ای پی آئی فیکلٹی	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
6	سنور کیپر	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
7	لیڈی ہیلتھ وزیٹر	12	میڈیکل فیکلٹی خیبر پختونخوا سے متعلقہ شعبہ میں 2 سال ڈپلومہ	18 سال سے 33 سال
8	دائی	04	دائی کورس	18 سال سے 40 سال

۱۔ شارٹ لسٹ امیدواروں کو انٹرویو کیلئے بلایا جائیگا۔

۲۔ لوکس امیدواروں کو ترجیح دی جائیگی۔

۳۔ ہر امیدوار کو اپنا سولہ ماہ کی عمر پر مبنی ضروری ہوگا۔

ڈاکٹر وزیر صافی ڈسٹرکٹ ہیلتھ آفیسر (باجوڑ ٹرائیبل ڈسٹرکٹ)

AT 11/13

Handwritten signature

محترم جناب ڈائریکٹر بریف سروسز (فائنا) جسٹس ٹیوٹوریل
کراچی

9-28

درخواست برائے ترقی آن ٹیکنیشن پوسٹ

جناب عالی!

مؤثرانہ گزارشات ہوتی ہیں کہ میں میڈیکل سائنس
ڈسٹرکٹ ہیڈ کوارٹر ہسپتال حارہ صاحبہ میں ڈپٹی سیرجین
رہے ہیں۔ میری تعیناتی ہسپتالی کی اساسی پوزیشن
رہی تھی اور تاحال میں اسی پوسٹ پر خدمات انجام دے
رہا ہوں۔ اور ساتھ ساتھ تعلیم بھی حاصل کر رہا تھا۔ میں
تقریباً سولہ سال آپ صاحبان کے زیر سایہ خدمات
سر انجام دے رہا ہوں لیکن ابھی تک ترقی کے کوئی آثار موجود
نہیں۔ مجھے معلوم ہوا تو ذرا دلچسپی سے معلوم کیا ہے کہ لائٹ
عالمی سہولت بننے سے ایک فیصلہ میں ہمت سے لوگوں
کو سائنس کی اساسیوں پر ترقی دی ہے۔ اس فیصلہ کو
جذبہ نظر رکھ کر مجھے بھی سائنس کی اساسی پر اولیٰ کے مطابق اولیٰ
دی جائے۔

گزارش صاحبان سے عاجزانہ التماس ہے کہ
2006 ڈیولپمنٹ مطابق سائنس کی اساسی پر ترقی دینے کے
احکامات صادر فرمائیں۔

التعمیم 2019/01/02

اللہ اعلم
آرٹ مائنر ڈائریکٹر

ATTACHED

Handwritten signature

فضل احمد ہشتی (BPS)
حارہ صاحبہ ڈیو ڈیو ہسپتال

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

No. _____/2019

Fazle Wahid

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Fazle Wahid*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. _____/_____/2019

Fazle Wahid

CLIENT

N.M.K.
ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHAN YOUSAFZAI

&

M.Z.S.
MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 498 / 2019

Mr. Fazli Wahid, Behishti (BPS-1)
DHQ Hospital, Bajaur at Khar----- Appellant

VERSES

Govt of Khyber Pakhtunkhwa, and others----- Respondents

Reply / comments on behalf of the Respondents No. 1, 4, 5, 6, 7

Respected Sheweth

Preliminary objections

1. That the appellant has not yet submitted his appeal in the department.
2. That the appellant has concealed the facts that he has no experience in the field of Health Technology.
3. That the appellant has concealed the fact that he has applied for two posts (i) EPI Technician (ii) Store Keeper, already advertised in the daily newspaper.
4. That inspite of the above facts, the appellant has got no locus standi to file the instant appeal.
5. That the appellant has not come to this Honorable Court with clean hands.
6. That the appellant has got no cause of action to file the instant appeal.
7. That, the appellant is not an "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

FACTS

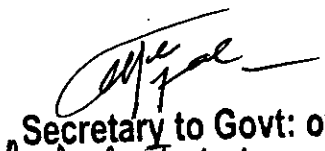
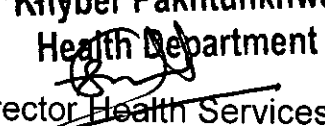
1. Correct.
2. Correct to the extent of appointment as Behishti (BPS-1) in DHQ Hospital Khar Bajaur. As far as acquiring of diploma in Health Technology is concerned, so it is stated that the Department does not know that how the appellant got a diploma as a regular student despite of regular duties in the District Headquarter Hospital Khar as per job description.

3. Incorrect, the Govt: has promulgated the rules of promotion of Class-IV employees to the post of Junior Clerk on seniority basis but there are no such rules of promotion of Class-IV employees in the field of Health Technology having pay scale BPS-12. Any one will apply and contest when the post is advertised. As far as acquiring of Diploma in Health Technology is concerned, so it is stated that the appellant has got it without NOC of the Department. Furthermore, the appellant has not yet submitted departmental appeal in this regards.
4. Correct. But it is stated that the impugned service structure dated 10.05.2016 was approved and notified by the higher authorities wherein, qualification and appointment in BPS-12 on initial basis, has been mentioned very clearly. As far as acquiring of diploma is concerned, so it is stated that the petitioner has got diploma without NOC of the department.
Furthermore, despite of the instant appeal, the appellant has applied for two positions (i) EPI Technician (ii) Store Keeper, already advertised by the Agency Surgeon District Bajaur.
5. Correct to the extent of court order dated 13.10.2011 and adjustment of some Ward Attendants upon the posts of Technicians BPS-12 by the Health Department Khyber Pakhtunkhwa vide Notification dated 28.02.2012. But as per remarks of the said Notification, the concerned Ward Attendants had got diplomas and they were already working on the posts of Technicians for the last one or two years and due to the said experience, the petitioners were adjusted against the posts of Technicians, As far as the plea of the appellant to be adjusted against the post of BPS-12 being a Class-IV is not justified because he has no experience in the field of Health Technology, therefore, the appeal of the appellant is not maintainable. Furthermore, it is pertinent to mention here that the Service Structure of Paramedics dated 10.05.2016 has superseded the Notification of Health Department dated 28.02.2012.
6. Incorrect, the appellant has not yet submitted his departmental appeal.
7. Incorrect, the appellant before submission of his departmental appeal preferred to file the instant appeal, hence, the appeal is not maintainable.


GROUNDS

- A- Incorrect. The demand of the appellant to be adjusted against the post of BPS-12 is not justified because he has no experience in the field of Health Technology. Furthermore, the appellant has already applied for two posts (i) EPI Technician (ii) Store Keeper, already advertised by the Agency Surgeon Bajaur in the daily newspapers. Hence, the appellant is not coming in the ambit of Notification dated 28.02.2012.
- B- Incorrect as stated above.
- C- Incorrect, as stated in Para 1 to 7 above.
- D- Incorrect, as stated in Para –A above.
- E- Incorrect, as stated in Para-A, above.
- F- Correct to the extent of serving as Class-IV in the Health department since 2003 but there are no such rules / regulation regarding promotion of a Class-IV of BPS-2 / Class-IV to the post of Technicians BPS-12 without clinical experience.
- G- Correct to the extent of Article-38 (e) of the constitution of Pakistan but there are no such rules / regulation regarding promotion of a Class-IV of BPS-2 / Class-IV to the post of Technicians BPS-12 without clinical experience.
- H- The Department will also raise other grounds at the time of arguments.

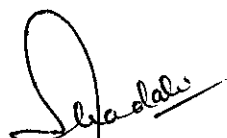
In light of the above, it is humbly prayed that the appeal has no legal footing; therefore, it may please be dismissed.


Secretary to Govt: of
Khyber Pakhtunkhwa
Health Department

Director Health Services,
Merged Areas Peshawar.

Respondent No. 5


Medical Superintendent,
DHQ Hospital Khar,
District Bajaur

For Respondent No. 6 & 7.


Director General Health Services,
Khyber Pakhtunkhwa Peshawar

Respondents No. 4