

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

SERVICE APPEAL NO. 375/2023

Abdur Rehman.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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Laeeq Ahmad,
Focal Person (Litigation)
office of DGHS, Khyber
Pakhtunkhwa, Peshawar

Khyber Pakhtunkhwa
Government
Case No. 7278
Dated 30/8/23

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 375 OF 2023

Abdur Rehman.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth:

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 matter in the Service Appeal pertains to up-gradation whereas larger bench of the Apex Court in Civil Appeal No. 101 and 102-P/2011 titled "Regional Commissioner Income Tax Vs Syed Munawar Ali & others" judgment dated 17-02-2016 has clearly mentioned that the Service Tribunal has no Jurisdiction to entertain any appeal involving the issue of up-gradation hence the honorable Court has no jurisdiction to adjudicate the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

10. That the instant appeal has been filed in violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 and the principle laid down in 2006 SCMR 1630 as there is no final order original or appellate against which the instant appeal has been filed.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Incorrect. The officials mentioned in the appeal who were up-graded were Senior to the appellant. The Seniority position is as under:

S. #	Name & Designation	BPS	Date of 1 st appointment
1	Muhammad Iqbal S/o Umar Bakhsh	9	25/03/1999
2	Khalid Noor S/o Said Mansoor	5	01/10/1982
3	Muhammad Shoaib S/o Rahim Ullah	5	01/11/1982
4	Niaz Bat Khan S/o Barakat Khan	5	09/04/1983
5	Abdur Rahman (Appellant)	5	01/07/1983

It is worth to mention that even then if the appellant felt aggrieved from the up-gradation Notification of the above mentioned colleagues of the appellant he would have challenged the same before proper forum instead filing the instant appeal at a belated stage.

4. Incorrect. Already explained in preceding para. However, it is further to clarify that the Supreme Court has held in 2022 SCMR 797 that up-gradation is not a right but policy of the government hence no vested right of the appellant has been violated by the replying respondents.
5. Incorrect. The appellant is at S. # 01 of the Seniority list and will be promoted to BPS-14 on availability of vacant post as per approved Service Rules.


ON GROUNDS:

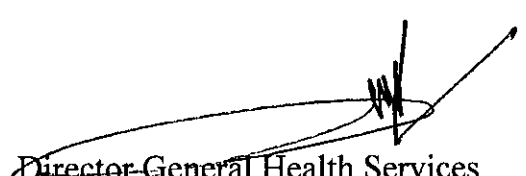
- a. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- b. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- c. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- d. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- e. Incorrect. Already replied in the preceding paras.
- f. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- g. Incorrect, as explained in Para No. 3 & 5 of the Facts.

- h. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- i. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- j. Incorrect, as explained in Para No. 3 & 5 of the Facts.
- k. The replying respondents also seek prior permission of this Honorable Tribunal to adduce other grounds during final hearing of the case.

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)


Director-General Health Services
Khyber Pakhtunkhwa Peshawar
(Respondent No. 03 & 04)
DD (Par)

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Affidavit

I, Laeeq Ahmad, Focal Person (Litigation). office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, 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.

Laeeq
Deponent

ATTESTED
Oath
Commissioner
25/8/23



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

Mr. Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in case Service Appeal No. 375/2023 titled Abdur Rehman VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned.

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