

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

Service Appeal No.1357/2023

**Dr. Muhammad Khalil Akhtar,**  
Health Services Academy,  
Director General, Health Services,  
Peshawar.....Appellant.

Versus

**The Government of Khyber Pakhtunkhwa,**  
through Chief Secretary,  
Civil Secretariat, Peshawar and others. ....Respondents.

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*Sajid*  
Appellant

Through

*Ashraf Ali Khattak*  
Ashraf Ali Khattak  
Advocate,  
Supreme Court of Pakistan

Dated: 20/09/2023

*22-09-23*

*Peshawar*

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

Service Appeal No.1357/2023

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 7744

Dated 21/09/23

**Dr. Muhammad Khalil Akhtar,  
Health Services Academy,  
Director General, Health Services,  
Peshawar.....Appellant.**

Versus

1. **The Government of Khyber Pakhtunkhwa,  
through Chief Secretary,  
Civil Secretariat, Peshawar.**
2. **The Secretary Health,  
Government of Khyber Pakhtunkhwa,  
Health Department,  
Civil Secretariat, Peshawar.**
3. **Director General Health Service,  
Government of Khyber Pakhtunkhwa,  
Peshawar.**
4. **The Secretary Establishment,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.**
5. **Dr. Mushtaq Ahmad,  
District Health Officer,  
Mansehra.**
6. **Dr. Muhammad Ehsan Waheed,  
Medical Superintendent,  
Tehsil Headquarter Hospital,  
Peniala.**
7. **Dr. Shehzad Faisal  
Hospital Director,  
Hayatabad Medical Complex,  
Peshawar.**
8. **Dr. Syed Nasir Shah,  
Director General Health Office,**

Peshawar.

9. **Dr. Safia**  
**Director Provincial Health Services Academy,**  
**Peshawar.**
10. **Dr. Muhammad Rehman Afridi,**  
**District Health Officer, Bannu .....Respondents.**

### **PARA WISE REPLY ON BEHALF OF RESPONDENT NO.9**

#### **Preliminary Objections:-**

1. That appellant has no cause of action and locus standi to file the present service appeal.
2. That appellant has not come to the court with clean hands and has suppressed material facts from the notice of this Hon'ble Tribunal.
3. That the Service Appeal is badly time barred.
4. That the Service appeal is not maintainable in its present form.
5. That the principle of Estoppel lies against the appellant.
6. That the question involved in the present appeal is hit by principle of "Past and Close Transaction.
7. That the present appeal has been filed with malafide intention just to waste the precious time of this Hon'ble Tribunal, therefore, liable to be dismissed with heavy cost.
8. That appeal for mis-jointer and non-jointer.
9. That the pray portion of the appeal is de-facto in nature and spirit.
10. That no facts and ground has been elaborated by the appellant to support his claim.
11. That appellant is not an aggrieved person within the meaning of section-4 of the Service Tribunal Act, 1974

#### **Para Wise Reply to Facts,**

1. That Para No.1 pertains to record. The Khyber Pakhtunkhwa Health Management Service Rules, 2008 have been notified on 11<sup>th</sup> December,

2008 and as per Rule-1(2) these Rules came into force at once i.e on 11<sup>th</sup> December, 2008. These Rules were immediately acted upon and all those, who were eligible and qualified as per provision and spirit of Rule-10 opted to join Management Cadre. The answering respondent No.9 (Dr. Safia) being eligible and qualified as per criteria drawn under Rule-10 opted to join the Management Cadre. The option was approved by the competent authority vide Notification dated 14-07-2009 in BPS-17. At the relevant time, appellant was not eligible and qualified to join the Management Cadre. Seniority of encadred doctors was notified where appellant is nowhere? The answering respondent was among the 1<sup>st</sup> batch "member of service", who opted and her option was approved by competent authority

2. That Para No.2 of the appeal does not provide the true details as to the Official Notification of the subject Rules. The Rules clearly provides that the same has been notified on 11<sup>th</sup> December, 2008 and immediately acted upon. The bare perusal of Rules establishes the fact that number of amendments were incorporated since then and even the varies of the Rule were also challenged before this Hon'ble Tribunal in service appeal No.513 of 2010. The appeal was decided by this Hon'ble Tribunal vide order 03-01-2012 with the direction to provide cushion period of two years for those, who wish to join Management Cadre by way improving their qualification as per terms of Rule-10 of the rules ibid. The decision was also upheld by the Hon'ble Supreme Court of Pakistan. Appellant was among those, who qualified the prescribed criteria after extension of the cushion period. Appellant was encadred in Management Cadre vide Notification dated 07-05-2018 and whereas the answering respondent No.8 (Dr. Safia) has been encadred on 14-07-2009. The question is to how the appellant could be presumed to be senior to the answering respondent. This is also a true fact that answering respondent No.9 (Dr. Safia) was serving in BPS-19 at the time, when appellant opted to join Management Cadre in BPS-18. Appellant lies at serial No.31 of the list notified vide dated 10-05-2018 (page-37/38 of the appeal). Moreover the Notification does

not provide any retrospective effect. The Hon'ble Supreme Court of Pakistan has laid down a principle of law that no notification or law can be given retrospective effect, unless specifically provided by the statute or notification. The Notification has already been attached by the appellant as **annexure-e**.

3. That Para No.3 is incorrect, hence denied. Proper procedure as per Khyber Pakhtunkhwa Health Management Service Rules, 2008 was adopted and all those, who opted to join Management Cadre, were approved by competent authority and their names were brought on the strength of Management Cadre through proper Notification.
4. That Para No.4 of the appeal is correct to the extent that service appeal No.513/2010, where this Hon'ble Tribunal vide order dated 03-01-2012 made observation for extension of cushion period for two years so as to enable other doctors of General Cadre to improve their qualifications and eligibility, who wishes to join Management Cadre and whereas the rest of the Para is not correct, hence denied.
5. That Para No.5 of the appeal is correct.
6. That Para No.6 is incorrect, hence denied. The detail answer has already submitted vide reply No.1 and 2 of the instant reply.
7. That Para No.7 of the appeal is correct. It is humbly submitted that law or Notifications have always promulgated or notified with prospective effect and not with retrospective effect unless specifically provided that the same shall have retrospective effect.
8. That Para No.8 of the appeal is correct to the extent that after extension of cushion period for two years vide Notification dated 10-05-2017. Appellant improved his qualification and eligibility as per spirit of amended Rule-10 of "The Khyber Pakhtunkhwa Health Management Service Rules, 2008" and vide Notification dated 10<sup>th</sup> May, 2018, he was enrolled in Management Cadre. The name of appellant lies at serial No.31 (page-38) of the list already attached by appellant as **annexure-e**.
9. That Para No.9, 10 and 11 does not relate to the answering respondent.
10. That Para No.12 of the appeal is incorrect, hence denied. It is evident from the from the Judgment of the Hon'ble Supreme Court of Pakistan 03-11-

2016 (already attached by the appellant with memo of appeal as **annexure-c (Operative part...Para No.2; page 34)**, wherein the Hon'ble Supreme Court has held that seniority of the appellant and others shall be counted from the date of their joining in the Management Cadre and not from any earlier period, which is also established principle that a person joining fresh cadre is regulated to the lowest position of that cadre. Para No.2 of the Judgment of the Hon'ble Supreme Court of Pakistan dated 03-11-2016 in CAs. No.126-P to 130-P of 2013 are reproduced as under:-

*“As regard the submission of learned ASC for the appellants in Civil Appeal No.320 to 324 of 2012, he was unable to explain before us as to how the seniority of the appellants will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting seniority but that of allowing them to acquire qualification for opting in management cadre. If the respondents at all join Management cadre, their seniority will be counted from the date of their joining in the Management Cadre and not from any earlier period, which is also established principle that a person joining fresh cadre is regulated to the lowest position of that cadre. Thus there seems to be hardly any reason muchless justifiable to interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellants. The Civil Appeal No.320 to 324 are, therefore, dismissed.”*

From the bare perusal of the afore said judgment ,it is very clear that the seniority of the incumbents, who opted to join Management Cadre at the earlier batch will rank senior from those who joins later in time. Appellant has been inducted in Management cadre vide Notification dated 10<sup>th</sup> May, 2018, where the name of the appellant lies at serial No.31 (page-38) of the list already attached by appellant as **annexure-e** and whereas the answering respondent No.9 (Dr Safia) has joined the Management Cadre on 14-07-2009 i.e during the very first batch. In this view of the matter the answering respondent (Dr. Safia) is an established senior to the appellant. The name of the appellant in the impugned seniority list lies at serial No.81(page-78) and whereas the name of the answering respondent No.9 (Dr. Safia) lies at serial No.42 of the list (page-75).

The impugned seniority list provides complete details of all the officers of the Management Cadre.

Now coming to the other aspect of the case. Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, promotion & transfer) Rules, 1989 provides as to the following:-

“17. Seniority :- (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise (promotion), with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

It is evident from the details of impugned seniority list that the answering respondent (Dr. Safia) was promoted to the post of BPS-18 on 29-10-2013 and to the post of BPS-19 on 26-09-2017 and promoted to the post of BPS-20 vide impugned Notification dated 21-12-2022 and whereas appellant has been promoted to the post of BPS-18 on 15-11-2017 and to BPS-19 on 25-01-2021. Appellant is not even a batch mate of the answering respondent (Dr. Safia). On this score as well the answering respondent No.9 (Dr. Safia) is/was an established senior. Appellant was not even in BPS-18, when the answering respondent (Dr. Safia) took her charge in BPS-19. Appellant is an established junior on each and every score. The instant appeal has been filed with malafide intention and with ulterior motive therefore, liable to be dismissed with heavy cost.

11. That Para No.13 of the appeal is incorrect, hence denied. Seniority list of the member of service or cadre are issued in accordance with law as provided in the statute and statutory rules. Any incumbent aggrieved of final seniority list shall approach the Service Tribunal by filing service

- appeal. It is the law, which determines the seniority position and not correspondence of departmental authorities.
12. That Para No.13 is also incorrect, hence denied. The detail answer has already been submitted in the above Para of the instant reply.
  13. That Para No.15 of the appeal is also incorrect, hence denied. After issuance/notifying of final seniority list, the department was under legal obligation to accelerate the promotion process as numbers of vacancies in Management Cadre were lying vacant and for which promotion was the need of the departmental business.
  14. That Para No.16 pertains to record, hence no comments.
  15. That Para No.17 is incorrect, hence denied. The detail answer has already be submitted in the preceding's paras.
  16. That Para No.18 pertains to record, hence no comments. However it is humbly submitted that answering has not received any notice with respect to Service Appeal No.1231/2022. The answering respondent do not know as to whether she is has been arrayed as party in that particular appeal or not. The answering respondent No.9 (Dr. Safia) reserves her right in this respect.
  17. That Para No.19 of the appeal is incorrect, hence denied. The promotion order of the answering respondent No.9 (Dr. Safia) is correct and in accordance with law.
  18. That Para No.20 pertains to record, hence no comments.
  19. That Para No.21 is incorrect, hence denied. Appellant is not an aggrieved person within the meaning of section 4 of the service Tribunal Act, 1974 and more so he has no locus standi and the appeal is not maintainable both on law and facts.

**Reply to Grounds of appeal:-**

- A. That Ground No. A, B and C of the appeal are evasive in nature and is the result of mis-conception. Promotion of the answering respondent is legal and in accordance with settled principle of law. The answering respondent is an established senior to the appellant.



- B. That Ground No. "D" of the appeal is evasive in nature therefore, denied. Appellant is an established junior to the answering respondent.
- C. That Ground No. "E" of the appeal is evasive in nature therefore, denied. The Judgment of the Hon'ble Supreme Court of Pakistan of Pakistan dated 03-11-2016 in CAs. No.126-P to 130-P of 2013 is very clear in this regard, which has already be re-produced in reply to the fact portion of the instant reply. The same stance has been reiterated vide Para No.4 by this Hon'ble Tribunal in service Appeal No. 830/2018 decided on 22-03-2019, which has already been attached by the appellant as **annexure-h (page no.45 to 53 relevant page-50 & 51)**. Moreover the answering respondent No.9 (Dr. Safia) is also senior to the appellant on the score of Rule-17 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rues, 1989. The whole explanation is available vide Para No.12 of the instant reply.
- D. That Ground No. "F" of the appeal is evasive in nature therefore, denied. The detail answer has already been submitted.
- E. That Ground No. "G" of the appeal is evasive in nature therefore, denied. The answering respondent No.9 (Dr. Safia) opted and approved to join Management Cadre on 14.07.2009 in BPS-17 and she was promoted to BPS-18 on 29-10-2013 and then to BPS-19 on 26-09-2017 and now promoted to BPS-20 on 21-12-2022. All the promotion orders of the answering respondent (Dr. Safia) have been carried out in Management Cadre, so she has nothing to do with General Cadre.
- F. That Ground No. "H" of the appeal is evasive in nature therefore, denied. The detail answer has already been submitted.
- G. That Ground No. "I" of the appeal is evasive in nature therefore, denied. Final Seniority list has been properly issued, whereby appellant lies at serial no.81 and the answering respondent No.9 (Dr. Safia) lies at serial No.42.
- H. That Ground No. "J" of the appeal is evasive in nature therefore, denied. No fundamental right of the appellant has been violated.
- I. That Ground No. "K" of the appeal is evasive in nature therefore, denied. No violation or nepotism and favoritism have been committed by the

officer's respondents. All the promotions have been actualized in accordance with law.

- J. That Ground No. "L" of the appeal is evasive in nature therefore, denied. The seniority list and promotion have been carried out in accordance with law.
- K. That Ground No. "M" of the appeal is evasive in nature therefore, denied. The officer respondents have up-hold the supremacy of law in the whole promotion exercise.
- L. That Ground No. "N" of the appeal is evasive in nature therefore, denied. The officer respondents have not violated the guaranteed rights of the appellant but rather up-hold the fundamental rights of every incumbents of the Management Cadre.
- M. That Ground No. "O" of the appeal is evasive in nature therefore, denied. Appellant is not an aggrieved person within the meaning of section-4 of the Service Tribunal Act, 1974.
- N. That the answering respondent No.9 (Dr. Safia) will also like to seek the permission of this Hon'ble Tribunal to rebut any ground taken by the appellant at the time of final hearing.

**PRAYER:**

*It is therefore prayed that in light of the Reply/comments as above, this Honorable Tribunal be gracious enough to decide upon the instant Service Appeal on merits.*

Through

*Safia*  
**Respondent No.9**  
*Ashraf Ali Khattak*  
**Ashraf Ali Khattak**  
 Advocate,  
*Supreme Court of Pakistan*

**Dated: \_\_\_/\_\_\_/2023**

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

**Service Appeal No.1357/2023**

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Health Services Academy,  
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**Versus**

**The Government of Khyber Pakhtunkhwa,  
through Chief Secretary,  
Civil Secretariat, Peshawar & others.....Respondents.**

**COUNTER AFFIDAVIT**

I, Dr. Safia W/o Dr. Fakhr-Ud-Deen Director, Provincial Health Services Academy, Peshawar do hereby solemnly affirm and declare on oath that the contents of accompanying reply are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court. It is further stated on Oath that in this appeal the answering respondent (09) has neither been placed ex-parte nor her defense has been struck of.

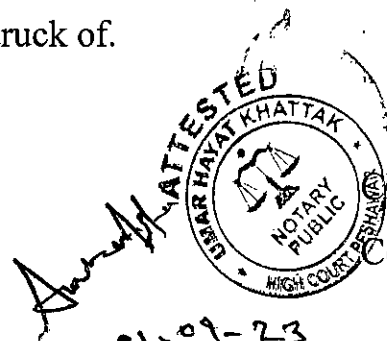
*Safia*  
Deponent

NIC: 15602-0294787-4

Cell: 0321-9067997

Identified by

*Ashraf Ali Khattak*  
**Ashraf Ali Khattak**  
Advocate, Peshawar



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

**Service Appeal No.1357/2023**

**Dr. Muhammad Khalil Akhtar,  
Health Services Academy,  
Director General, Health Services,  
Peshawar.....Appellant.**

**Versus**

**The Government of Khyber Pakhtunkhwa,  
through Chief Secretary,  
Civil Secretariat, Peshawar and others .....Respondents.**

**Reply in response to the application submitted by the appellant for  
condonation of delay.**

**Respectfully Sheweth:-**

1. That Para No.1 is legal, hence no comments.
2. That Para No. 2 is incorrect, hence denied. Appellant is neither senior to the answering respondent No.9 (Dr. Safia) nor appellant is entitle to promotion in preference to the answering respondent No.9. The answering respondent is senior on every score. The detail answer has already been submitted vide Para No.12 of the accompanying reply.
3. That Para No.3 of the application pertains to record, however it is humbly submitted that the answering respondent has no knowledge of the appeal of the appellant as she has not received any notice of the same till the date.
4. That Para No.4 of the application is incorrect, hence denied. Section 9 of the Limitation Act, 1908 was founded on general principle that limitation once commenced to run would continue to run unless stopped by virtue of any express statutory provision of law. Wisdom may be derived from the reported Judgment of the Hon'ble Supreme Court of Pakistan cited as 2022 SCMR 778, 2007 SCMR 1792 etc. It has been repeatedly held by the Hon'ble Supreme Court of Pakistan that in case of delay; the

appellant / applicant was bound to explain each and every day. Section 9 of the limitation Act, 1908 is reproduced for kind consideration.

**“9. Continuous running of time.— Where once time has begun to run, no subsequent disability or inability to sue stops it:”**

In the instant case period of limitation has commenced; the movement appellant filed departmental appeal allegedly on 19-01-2023. Appellant was required to submit his service appeal with 120 days, but he failed to submit the same within prescribed limit of time therefore, appellant is badly time barred. It is also noticeable that page-91 of the main appeal shows different dairy numbers, which is also to be seen in the light of official record. In view of section 9 of the limitation Act, 1908; the period of limitation cannot be stopped and condoned even on the ground that matter pertain to promotion and no limitation runs in case of promotion.

5. That Para No.5 of the application is incorrect, hence denied. Appellant has to explain each and every day for condonation of delay as per spirit of the law laid down by Hon'ble Supreme Court of Pakistan. The plea taken by the appellant for condonation of delay is not sufficient.
6. That Para No.6 of the application is incorrect, hence denied. The detail answer has already been submitted.
7. That Para No.7 of the application is incorrect, hence denied. Limitation is not a technical ground but a law AND known to be law of limitation. The appeal is otherwise not on merit.

**PRAYER:**

*It is therefore prayed that in light of the Reply/comments as above, this Honorable Tribunal be gracious enough to decide upon the instant Application on merits.*

*Safia*

**Respondent No.9**

**Through**

*Ashraf Ali Khattak*

**Ashraf Ali Khattak**  
Advocate,  
*Supreme Court of Pakistan*

**Dated: 20 / 09 / 2023**

WAKALAT NAMA

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal, Peshawar

Dr. Muhammad Khalil Akhtar

Appellant(s)/Petitioner(s)

VERSUS

Chief Secretary and others

Respondent(s)

I/We Dr. Safia (Respondent # 9) do hereby appoint **Mr. Ashraf Ali Khattak, Advocate Supreme Court of Pakistan** in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Safia.  
Signature of Executants

Ashraf Ali Khattak  
Advocate,  
Supreme Court of Pakistan