

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

SERVICE APPEAL NO. 874/2022

Muhammad Ilyas.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 874 / 2022

Case No. 7920

Date 26-09-23

Muhammad IlyasAppellant

Versus

Government of Khyber Pakhtunkhwa & others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 TO 06

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 deliberately concealed the material facts from the Honorable Tribunal, hence, liable to be dismissed.
3. That the Appellant has filed the instant appeal just to pressurize the respondents.
4. That the Appellant has filed the instant appeal on mala-fide motives.
5. That the appeal is not maintainable in its present form and also in the present circumstances of the case.
6. That the Appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is bad due to non-joinder of necessary and mis-joinder of unnecessary parties.
8. That the appeal is badly time-barred.
9. That the Appellant has been estopped by his own conduct to file the appeal.

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ON FACTS:-

1. Pertains to record.
2. Pertains to record. However, it is worth to mention that the appellant has been appointed as Pharmacy Technician.
3. Incorrect. Infact the appellant had obtained a degree in the field of Health Technology Multi-Purpose (MP) and not in the Pharmacy Technology as there is no degree in the field of Paramedical Pharmacy Technology.
4. Incorrect. As stated in preceding para that the appellant is a Pharmacy Technician, however, he had obtained a degree in the field of Health Technology (MP) which is not in the relevant field. According to the Notification dated 04.11.2020 for promotion to BPS-17, the criteria is as under:

*“At least second class BS/Bsc (04 years)
(Honors) / Master Degree in the relevant
technologies from a recognized university”*

It is further to clarify that in accordance with the note in the ibid Notification in para-d (iii)

Note: *“Master in Public Health (MPH) degree from a recognized university shall be considered for promotion only for those categories where degrees in the relevant technologies, does not exist. In case non-availability of MPH or relevant degree in their relevant categories, vacant posts shall be considered for promotion on the basis of seniority cum fitness from amongst the Chief Clinical Technicians and Chief PHC Technicians in their relevant technologies with at least three years service as such”.*

It is crystal clear from the above rules that the appellant neither has a degree in the relevant field nor did has a degree of MPH, therefore, he is not eligible for further promotion as prayed in the instant appeal. **(Copy of the Notification dated 04.11.2020 is Annexed as Annexure-A)**

5. Correct to the extent that the appellant is not eligible for promotion to BPS-17 for the lack of degree in the relevant field or degree MPH under the rules.
6. Incorrect. The appellant is not an aggrieved person as no vested right of the appellant has been violated by the replying respondents. However reply on the ground is as under:

ON GROUNDS

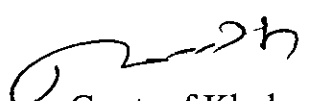
1. Incorrect. The departmental appeal of the appellant has already been regretted vide this Directorate letter No. 12220 dated 23/08/2021 however, the appellant did not challenge the order before any forum (Annex-B).
2. Incorrect. As in Para No. 4 of the Facts.
3. Incorrect. As in Para-1 of the Grounds.
4. Incorrect. As in Para No. 4 of the Facts.
5. 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 the instant appeal, being devoid of merit, may graciously be dismissed with costs.



Director General Health Services
Khyber Pakhtunkhwa Peshawar
Respondent No. 01



Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
Respondent No. 02



Director General PHSA
Khyber Pakhtunkhwa Peshawar
Respondent No. 03



Assistant Director (Admin)
PHSA Khyber Pakhtunkhwa Peshawar
Respondent No. 04



Superintendent PHSA
Khyber Pakhtunkhwa Peshawar
Respondent No. 05



District Health Officer Battagram
Respondent No. 06

EXTRAORDINARY
GOVERNMENT



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REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 6TH NOVEMBER, 2020.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Peshawar dated the 04th November, 2020

No. SOH-III/8-60/2020/Paramedics/SSRC/1440-82:- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Health Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SOH-III/HD/3-5/2014, dated: 10-05-2016, the following amendments shall be made, namely:-

AMENDMENTS

In the Appendix:-

- (a) against Serial No. 1, in Columns No. 2 and 5, for the existing entries, the following shall be substituted, namely:

2	5
Principal Technologist.	"By promotion, on the basis of seniority-cum-fitness, from amongst the Chief Technologists and Chief PHC Technologists with five years service in BPS-19 or seventeen years service in BPS-17 and above as such. Note: A joint seniority of Chief Technologists and Chief PHC Technologists shall be maintained for the purpose of promotion."

- (b) against Serial No. 2, in Columns No. 2 and 5, for the existing entries, the following shall be substituted, namely:

2	5
"Chief Technologist/ Chief PHC Technologist.	"By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clinical Technologists and Senior PHC Technologists with seven years service in BPS-18 or twelve years service in BPS-17 and above as such. Note: A joint seniority of Senior Clinical Technologists and Senior PHC Technologists shall be maintained for the purpose of promotion."

- (c) against Serial No. 3, in Columns No. 2, 3, 4 and 5, for the existing entries, the following shall be substituted, namely:

Attested
[Signature]

conduct to file the appeal.

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<u>Gastroenterology.</u>			
xii)	Senior Clinical Technologist		
	Ophthalmology/Otolaryngology		
xiii)	Senior PHC Technologist		
	(Multi Purpose)		
xiv)	Senior PHC		
	Technologist (MCH)		

(d) against Serial No. 4.-

(i) in Column No. 3. for the existing entries, the following shall be substituted, namely:

"At least Second Class BS/BSc (04-years) (Honors)/ Master Degree in the relevant technologies from a recognized University.

Note: For the purpose of clause (b), in Column No. 5, apart from the enhanced qualification, B.Sc two years Degree from a recognized University shall be applicable up to seven (07) years from the commencement of this amending notification."

(ii) in Column No. 4. for the existing entries, the following shall be substituted, namely:

"22-35 Years" and

(iii) in Column No. 5. in clause (b), after the proviso, the following shall be inserted, namely:

"Note: Master in Public Health Degree from a recognized University shall be considered for promotion only for those categories where Degree in the relevant technologies does not exist. In case of non availability of MPH or relevant degree in their relevant categories, vacant posts shall be considered for promotion on the basis of seniority-cum-fitness, from amongst the Chief Clinical Technicians and Chief PHC Technicians in their relevant Technologies with at least three years service as such."

(c) against Serial No. 5. in Column No. 5. for the existing entries, the following shall be substituted, namely:

"By promotion, on the basis of Seniority-cum-fitness, from amongst the Senior Clinical Technicians (BS-14) and Senior PHC Technicians (BS-14) with two years service in the relevant Technology as such. In case the required length of service is less than two years then one fourth service in lower basic scales shall be counted as service in BPS-14.

Note: (i) The counting of one fourth service in lower basic scales as service in BS-14

Attested
[Signature]

own conduct to file the appeal.

2	3	4	5
Senior Technologist/ Senior PHC Technologist.	At least MS/ M.phil in the relevant technologies from ^a recognized University.	23-40 Years.	(a) Seventy percent (70%) by promotion, on the basis of seniority-cum-fitness, from amongst the Clinical Technologists and PHC Technologists with five years service in the relevant technologies as such. In case the required length of service is less than five years then half of the service in BS-16 and one fourth service in below BPS-16 shall be counted as service in BPS-17 in the relevant technology;
i) Senior Clinical Technologist <u>Dental</u> .			
ii) Senior Clinical Technologist <u>Pharmacy</u> .			
iii) Senior Clinical Technologist <u>Radiology</u> .			
iv) Senior Clinical Technologist <u>Pathology</u> .			
v) Senior Clinical Technologist <u>Anaesthesia</u> .			
vi) Senior Clinical Technologist <u>Cardiology</u> .			
vii) Senior Clinical Technologist <u>Surgical</u> .			
viii) Senior Clinical Technologist <u>Dialysis</u> .			
ix) Senior Clinical Technologist <u>Physiotherapy</u> .			
x) Senior Clinical Technologist <u>Pulmonology</u> .			

Note: A joint seniority list of Clinical Technologists and PHC Technologists shall be maintained for the purpose of promotion; and

(b) thirty percent (30%) by initial

Attested


to file the appeal.

(ii) A separate seniority list of Senior Clinical Technicians and Senior PHC Technicians of relevant technology shall be maintained for the purpose of promotion."

(f) against Serial No. 6, in Column No. 5, for the existing entries, the following shall be substituted, namely:

"By promotion, on the basis of Seniority-cum-Fitness, from amongst the Technicians and PHC Technicians with two years service as such in the relevant Technology." And

Note: A separate seniority list of Technicians and PHC Technicians shall be maintained in the relevant technology for the purpose of promotion."; and

(g) against Serial No. 7, in Columns No. 3 and 4, for the existing entries, the following shall be substituted, namely:

3		4
<p>(i) Technician/ PHC Technician: At least Second Division Secondary School Certificate in science from a recognized Board and two years Diploma in the relevant Paramedical Technology from recognized Medical Faculty or F.Sc Medical Technology in the relevant Technology from a recognized Board.</p>		<p>18-32 Years."</p>
<p>(ii) PHC Technician (MCH): At least Second Division Secondary School Certificate in science from a recognized Board and Diplomas of LHV and Midwifery from recognized a Nursing Examination Board and having valid registration with Pakistan Nursing Council as LHV.</p>		

SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Printed and published by the Manager,
State, Ptg. Dept., Khyber Pakhtunkhwa, Peshawar.

*Attested
his*

conduct to file the appeal.

Encls. No. & Date even

Encls. No: SOH-III/B-60/2016(Paramedics/Nurses/Service Rules)

Dated Peshawar, // -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 Suprintendents DHQ/THQ Hospitals of Khyber Pakhtunkhwa.
8. All the Principals of Medical Colleges in Khyber Pakhtunkhwa.
9. The Dean P.G.M.H. 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. PSO 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 Khattal
Deputy Secretary-

Asfandyar
Khattal

conduct to file the appeal.



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR.

Amir
(13) 9

Office Ph# 091 - 9210269 Exchange# 091 - 9210187, 091 - 9210196, Fax #091 - 921023

All communications should be addressed to the Director General Health Services Peshawar official by name

NO. 12220 /Promotion Cell

Dated: 23/08 2021.

To,

The District Health Officer
Battagram.

Subject: REQUEST FOR CONSIDERING HEALTH TECHNOLOGY DEGREE FOR PROMOTION IN RESPECT OF PHARMACY TECNICIAN.

Kindly refer to your letter No. 1255 dated 06-07-2021, on the subject noted above and to inform that the request of the applicant can not be acceded to being not covered under the rules.

J. H.
ADDITIONAL DIRECTOR GENERAL (HR)
Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

17/08/21

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

SERVICE APPEAL NO. 874/2022


Muhammad Ilyas.....Appellant

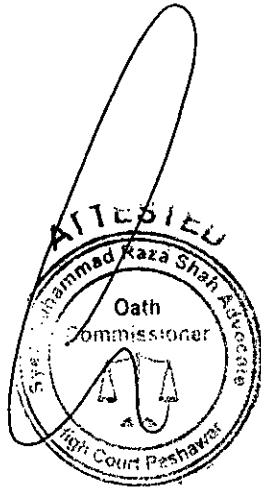
Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

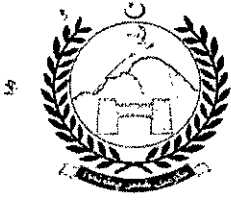
Affidavit

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.


Deponent



26 SEP 2023



**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 Service Appeal No. 874/2022 titled Muhammad Ilyas VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned.


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