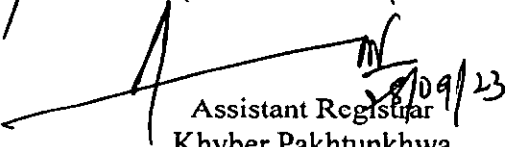


Cost of Rs. 4000/- received in Service Appeal No. 1231/2022,

Titled Dr. Khalil Rehman vs. Health

in the office of Assistant Registrar, Vide Order 05-09-23, submitted Dated: 28/09/2023.


Assistant Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1231/2022

Dr. Muhammad Khalil Akhtar(Appellant)

Versus

Government of Khyber Pakhtunkhwa and others

.....Respondents

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Amir. 25/9/23

Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1231 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7978

Dated 28/09/23

Dr. Muhammad Khalil Akhtar.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 4.

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.

Amir
24/8/23

ON FACTS:-

1. Pertains to Record.
2. Pertains to Record.
3. Pertains to Record. However, it is worth to mention that only those doctors who fulfilled the criteria as per Management Cadre Rules and opted for induction into the Cadre were inducted.
4. Correct to the extent of judgment of Service Tribunal dated 03.01.2012 in Service Appeal No. 513/2010.
5. Correct to the extent that judgment of Service Tribunal dated 03.01.2012 in Service Appeal No. 513/2010 was challenged before the Apex Court which was dismissed vide judgment dated 03.11.2016 however, the Apex Court held that "seniority in the Management Cadre will be reckoned 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 relegated to the lowest position of that cadre".
6. Pertains to record.
7. Pertains to Record.
8. Correct to the extent of amendment in Rule 10 of the Khyber Pakhtunkhwa Health Management Service Rules 2008 wherein a proviso in sub rule 2 was inserted as under:

"Provided further that for a period of two years, from date of issuance of amending Notification, the officers of the general cadre, who are in regular and continuous service and holding posts as such, shall be required to improve their qualification as per the Khyber Pakhtunkhwa Health Management service Rules 2008 to exercise the option under this rules".

9. Pertains to Record.
10. Pertains to Record.
11. Pertain to Record.
12. Pertains to record.
13. Pertains to Record.
14. Correct to the extent that the observation was made on the seniority list of management cadre. However on satisfactory reply on the observations seniority list of Management Cadre, BS-19 for the year 2021 was notified by the replying respondents on 17-03-2022 in accordance with law and Rules.

15. Pertains to record. However, the trainings mentioned in the para was cancelled by the respondents vide Notification No. SOH (E-V)M. Cadre 4-4/ Training 2021 dated Peshawar the July, 2021. **(Copy of the Notification is Annexure-A)**
16. Pertains to Court record. However as stated in para 15 above the training was cancelled by the replying respondents.
17. Incorrect. After fulfilling of all codal and legal formalities and with approval of the competent authority the impugned seniority list of Management Cadre BS-19 dated 17.03.2022 was issued by the replying respondents in accordance with the principle laid down by the Honorable Apex Court while deciding CAs No. 320-324/2012 and CAs No. 126-P to 130-P/2013 vide judgment dated 03.11.2016 (Already annexed as Annexure-C with the appeal) in which the appellant's name was correctly reflected at S. No. 81 of the list by counting his seniority from the date of his induction/option into the Management Cadre as per the above mentioned judgment of the honorable Court.
18. Incorrect. No vested right of the appellant has been violated by the replying respondents however, reply on the grounds is as under:

ON GROUND:

- A. Incorrect. The replying respondents acted as per law, rules, principle of naturel justice and in compliance with the judgment of the Apex Court on the subject.
- B. Incorrect. As explain in Para 'A' above.
- C. Incorrect. Already replied in detail in para 17 of the facts.
- D. Incorrect. Already replied in para 17 of the facts.
- E. Incorrect. Already replied in para 17 of the facts and para "A" of the grounds.
- F. Incorrect. Already replied in para 17 of the facts.
- G. Pertains to Record. However, the appellant has been treated in accordance with law, rules and principle of natural justice as well as judgment of the Apex Court.
- H. Incorrect. In fact the replying respondents acted in accordance with the basic idea of the Management Rules by issuing the impugned Seniority list.

- I. Incorrect. Already replied in para A above.
J. Incorrect. Already replied in para A above.
K. Incorrect. Already replied in para A above.
L. Incorrect. As per para 17 of the facts.
M. Incorrect. Already replied in para A above.
N. Incorrect. Already replied in para A above.
O. No comments. However, no vested right of the appellant has been violated by the replying respondents.
P. 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.

*Confidential
22/18/22*

[Signature]
Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
Respondent No. 01 & 02

[Signature]
Director General Health Services
Khyber Pakhtunkhwa Peshawar
Respondent No. 03

[Signature]
Secretary to Govt. of Khyber
Pakhtunkhwa Establishment Department
Respondent No. 04

Government of Khyber Pakhtunkhwa,
Health Department

Annex A

Dated Peshawar the July 15, 2021

NOTIFICATION

NO. SOH (E-V)/M. Cadre/4-4/TRAINING/2021/

In compliance with the

directions of the Hon'ble Peshawar High Court Peshawar, vide order dated 15/07/2021, passed in W.P.No. 2868-P/2021; and in the wake of onset of the fourth wave of Covid-19, the Competent Authority is pleased to postpone 04 Months mandatory promotional training of Management Cadre from BS-19 to BS-20 scheduled w.e.f 05th July 2021 at Provincial Health Service Academy, Peshawar with immediate effect, and until further orders.

Consequent upon the above, all the participants to the said training are hereby directed to immediately resume their duties at their respective places of postings.

Secretary Health

Endst. Of even No. & Date.

Copy to the:-

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar with the request to inform all the participants accordingly.
2. Director General PHSA, Khyber Pakhtunkhwa for necessary action & compliance of the above directions.
3. Director General Drugs, Khyber Pakhtunkhwa.
4. Chief HSRU, Health Department, Khyber Pakhtunkhwa.
5. DS(Lit) Health Department, Khyber Pakhtunkhwa.
6. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
7. All District Health Officer, Khyber Pakhtunkhwa.
8. All Medical Superintendent, Khyber Pakhtunkhwa.
9. All Hospital Director, MTIs, Khyber Pakhtunkhwa.
10. All District Accounts Officers, Khyber Pakhtunkhwa.
11. Manager Government Printing Press, Peshawar for Gazette notification.
12. PS to Minister for Health Department, Khyber Pakhtunkhwa.
13. PS to Secretary Health Department, Khyber Pakhtunkhwa.
- All Doctors concerned.

(Latif Ur Rehman)
SECTION OFFICER (E-V)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LITTEr

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department

9/15/23

Signature
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa