

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1357/2023

Dr. Muhammad Khalil Akhtar (Appellant)

Versus

Government of Khyber Pakhtunkhwa and others..... Respondents

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11/12/23

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.1357 /2023

Khyber Pakhtunkhwa
Service Tribunal
No. 8237
Dated 11/10/23

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 with 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.
10. That respondent No. 05 to 10 being senior than the appellant have rightly been promoted vide Notification dated 21.12.2022.
11. That the instant appeal has been filed in violation of section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974.

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 under the Management Cadre Rules 2008.
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. Correct to the extent of pendency of the Service Appeal No. 1231/2022 however, it is worth to mention that after receiving copy of notice without copy of the Service Appeal on 22.02.2023 the representative of the department after getting complete copy of the Service Appeal submitted parawise comments on 28.09.2023.
19. Incorrect. The replying respondents as stated in para 18 above received notice of the service appeal on 22.02.2023 however, the private respondent was promoted vide Notification dated 21.12.2022 on the basis of seniority list, prepared on the basis of judgment of the Supreme Court of Pakistan whereas being junior the appellant would be promoted on his own turn in accordance with law and rules.
20. Pertains to record. However, the instant appeal was to be filed before 18.05.2023 however, the instant appeal was not filed within the prescribed period of limitation hence; the same is liable to dismissed on this score alone.
21. 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.

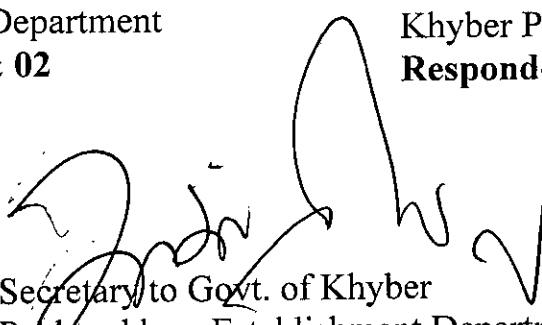
- B. Incorrect. As explain in Para 'A' above.
- C. Incorrect. Already replied in detail in para 17 of the facts.
- D. Incorrect. Already replied in para 17 of the facts.
- E. Incorrect. Already replied in para 17 of the facts and para "A" of the grounds.
- F. Incorrect. Already replied in para 17 of 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 Seniority list as well as the impugned promotion Notification dated 21.12.2022
- 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.


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


Director General Health Services
Khyber Pakhtunkhwa Peshawar
Respondent No. 03


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

Government of Khyber Pakhtunkhwa,
Health Department

Dated Peshawar the July 18, 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

Encls. 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 (Cr) 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.
14. All Doctors concerned.

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

*Mashed
Campis*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1357/2023

Dr. Muhammad Khalil Akhtar(Appellant)

Versus

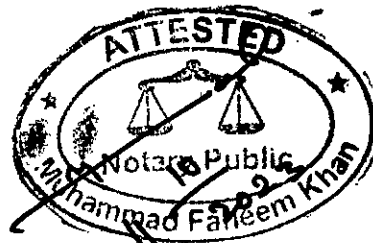
Government of Khyber Pakhtunkhwa and othersRespondents

AFFIDAVIT

I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No. 1357/2023 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal the answering respondent have neither been placed ex-party nor their defense have been struck-off or any cost imposed.

Muhammad Tufail
11/12/2023
Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department

Section Officer (Lit-II)
Government of Khyber Pakhtunkhwa
Health Department



Reply

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

Service Appeal No.1357 /2023

Dr. Muhammad Khalil Akhtar.....Appellant

Versus

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

REPLY TO APPLICATION FOR CONDONATION OF DELAY

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got no cause of action or locus standi to file the instant application.
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.

Facts

1. No comments.
2. Incorrect. The Service Appeal has been filed against the promotion Notification of the private respondents dated 21.12.2022 beyond the period of limitation hence, the same is not maintainable being time barred. According to the dictum laid down in **2010 SCMR 1982** "question of limitation could not be taken lightly, as in service matter such question can be considered seriously and applied strictly".
3. Pertains to record. However, the Apex Court has held in **2009 SCMR 1435** "law favored diligent litigant and not negligent". It is further to clarify that the Service Appeal No. 1231/2022 has been filed against the seniority list whereas the instant Service Appeal has been filed against the promotion Notification dated 21.12.2022 wherein private respondents have been promoted in accordance with law. It is worth to mention that the Apex Court in **2009 SCMR 1435 (c)** has held "it is duty and obligation of aggrieved person to pursue his legal remedy with

diligence and to satisfy conscience of Court or Quasi-judicial-authority for approaching respective forums beyond prescribed limitation--- In case aggrieved person does not avail remedy within prescribed period then vested right approves to other side which could not be taken away lightly if objections to that effect were not raised by opposite party”.

4. Incorrect. The Service Appeal has admittedly been filed beyond the prescribed period of limitation whereas there is no explanation / plausible reasons have been given in the instant application nor did each day have been explained. The Apex Court in **2009 SCMR 1435 (b)** “person seeking condonation of delay was to justify each day delay but civil servant in his application for condonation of delay did not raised any plausible reason/ ground for condonation of delay”.
5. Incorrect. Already replied in para 04 above.
6. Incorrect. Already replied in para 04 above.
7. Incorrect. The Apex Court in **2013 SCMR 911 (c)** “question of limitation cannot be considered a technicality simpliciter as it had its own significance and would have substantial bearing on the merits of the case”.

In view of the above, it is therefore requested that the instant application along with the Service Appeal may graciously be dismissed with cost.


SECRETARY HEALTH
KHYBER PAKHTUNKHWA



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

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