

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL, PESHAWAR

Service Appeal No.657/2023

Jan Alam. **APPELLANT**

V E R S U S

Govt. of KPK & others. **RESPONDENTS**

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Respondent No.8 & 9
Through


ABDULLAH QAZI
Advocate High Court.

Dated: 13.10.2023

D. I. 15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.657/2023

Jan Alam. **APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa, & others. . . . **RESPONDENTS**

REPLY BY AND ON BEHALF OF
RESPONDENTS NO.8 & 9

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8298

Dated 13-10-23

Respectfully Sheweth:

Preliminary Objections:

- a. That the appellant has got no cause of action to file the present appeal.
- b. That the appellant has estopped by his own conduct to file the appeal in hand.
- c. That the appeal of the appellant is not maintainable in the present form.
- d. That the appellant has not come to this court with clean hands, thus the appeal is liable to be dismissed on this score alone.
- e. That appeal of the appellant is barred by law.
- f. That the appeal is premature and is thus not maintainable.
- g. That the answering respondents have spotless and unblemished service career, while the conduct and service career of the appellant is very much clear

from the last paragraph of the judgment dated 18.01.2022 of this Hon'ble Tribunal, passed against the appellant, thus no comparison can be made between the answering respondents and appellant.

ON FACTS:

1. That in reply to Para No.1 of the appeal, it is clarified that names of the answering respondents are mentioned at Sr.No.2 & 3, whereas name of the appellant has been admittedly mentioned at Sr.No.5, which shows that the answering respondents are senior than appellant and, which seniority list has not been impugned/challenged at any fora.
2. That in response to Para No.2 it is submitted that the para relates to the personal removal/reinstatement etc. of the appellant, therefore, needs no reply on behalf of the answering respondents. However, the reinstatement order of the appellant is a conditional order and the judgment/order of this Tribunal is very much clear in this regard. The promotion of the answering respondents is legal and according to circumstances, rules and regulations and cannot be questioned as in light of the clear cut observations/orders/judgment made against the appellant, the appellant cannot be considered for promotion as the appellant lacks the basis required for promotion i.e. seniority-cum-fitness.
3. That in response to Para No.3 of the appeal, it is stated that the promotion orders of the answering

respondents are legal and based on the final seniority list as stood on 01.01.2020, which has never been challenged at any forum as well as on the basis of service record of the answering respondents. The promotion orders of the answering respondents are legal, according to law, rules and regulations and based upon seniority-cum-fitness.

4. That Para No.4 of the appeal is incorrect, wrong and baseless, as regard to the answering respondents. The answering respondents are the employees of the Provincial Health Services Academy (PHSA). They have been appointed by the competent authority in the PHSA network. Respondent No.8 was initially appointed as Junior Clerk on 06.04.1991 in Paramedical Institute Swat, which was later on merged alongwith students and staff into PHSA network established in 1999. An option was also sought from the employees and thus the answering respondents opted for remaining in the services of PHSA network. Whereas, respondent No.9 was appointed as Junior Clerk in the School of Nursing Saidu Sharif Swat vide order No.4631-36, dated 25.06.2002, being endorsed by Director PHSA through Endst No.2434/PHSA/M-2 of 05.07.2002. The promotion of the answering respondents has been made in accordance with law, rules and regulations, keeping in view their previous service record. Therefore, the para is incorrect, wrong, baseless and based on malafide, hence denied. Copies in this regard will be placed on file before the final arguments.

5. That Para No.5 of the appeal is incorrect, wrong and baseless, as stated. The para is ambiguous. Appellant has got no locus standi or cause of action against the answering respondents.
6. That Para No.6 of the appeal is ambiguous and does not show any cause of action, thus the appellant is not an aggrieved person and has no cause of action/locus standi to challenge the promotion orders of the answering respondents, thus the appeal is liable to be dismissed, on the following grounds, inter alia;

GROUND S:

- i. That Para "i" of the appeal is incorrect, wrong and baseless, as stated. The promotion orders of the answering respondents have been made in accordance with law, rules and regulations, keeping in view their previous service record. Therefore, the para is incorrect, wrong, baseless and based on malafide, hence denied. In this regard Para No.7 of the judgment of this Hon'ble Tribunal is very much clear thus the appeal is liable to be dismissed on this score alone.
- ii. That Para "ii" is incorrect, wrong and baseless, as stated. The answering respondents are the employees of the Provincial Health Services Academy (PHSA). They have been appointed by the competent authority in the PHSA network. Respondent No.8 was initially appointed as Junior Clerk on 06.04.1991 in Paramedical Institute Swat, which was later on merged alongwith students and

staff into PHSA network established in 1999. An option was also sought from the employees and thus the answering respondents opted for remaining in the services of PHSA network. Whereas, the respondent No.9 was appointed as Junior Clerk in the School of Nursing Saidu Sharif Swat vide order No.4631-36, dated 25.06.2002, being endorsed by Director PHSA through Endst No.2434/PHSA/M-2 of 05.07.2002. The promotion of the answering respondents has been made in accordance with law, rules and regulations, keeping in view their previous service record. Therefore, the para is incorrect, wrong, baseless and based on malafide, hence denied.

- iii. That in response to Para "iii" of the appeal, it is submitted that as evident from the para at the time of the meeting for the promotion of the answering respondents, the appellant was not in the service and is still re-instated conditionally, therefore, being premature, the appeal is liable to be dismissed on this score alone. The appellant is not entitled to compete/to challenge the legal and valid promotion orders of the answering respondents on the basis of a conditional re-instatement order, hence the para is denied. Moreover, the order/observations passed by this Hon'ble Tribunal in the judgment 18.1.2022 are very much against the appellant and which has not been challenged by the appellant, thus the appeal is liable to be dismissed.
- iv. That Para "iv" of the appeal is incorrect, wrong and baseless, as stated. The para is mere allegations and

nothing else. The appellant was appointed as Junior Clerk on 31.01.2011, from the Surplus Pool, whereas the respondent No.9 was appointed as Junior Clerk on 25.06.2002 in the PHSA network, thus no injustice has been caused to the appellant hence the para is denied. The intervening period of the appellant has been decided to be treated as leave without pay, hence keeping in view the conditional order of re-instatement, the appellant has got no cause of action against the answering respondents. Detailed position has already been explained in the preceding paras.

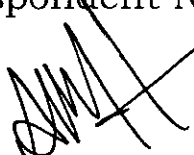
- v. That Para "v" of the appeal is incorrect, wrong and baseless, as stated. During the proceedings/meeting for the promotion of the answering respondents, the appellant was not in service and has been re-instated conditionally. It is further submitted that the intervening period has been ordered to be treated as leave without pay, hence in the scenario the appellant has got no cause of action against the promotion orders of the answering respondents. The promotion orders of the answering respondents have been made in accordance with law keeping in view the service record of the answering respondents, hence the para is denied. Keeping in view the above facts, the appellant has got no cause of action and thus is not entitled to any relief.
- vi. That in response to Para "v", it is submitted that the answering respondents would seek permission of this Hon'ble Tribunal to advance other grounds at the time of hearing.

In view of the above, it is humbly prayed that the appeal of the appellant may please be dismissed with heavy costs throughout.

Any other relief, this Hon'ble Tribunal deems appropriate in the circumstances, may also be granted in favour of the answering respondents.

Through

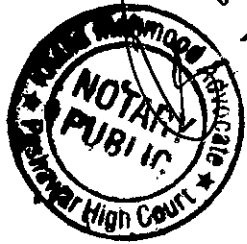
Respondent No.8 & 9

Fakhru

ABDULLAH QAZI
 Advocate,
 High Court Peshawar

Dated: 13.10.2023

AFFIDAVIT

It is stated on oath that the contents of the **Reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Fakhru
 DEPONENT

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defenses has been struck off.