

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR, AT CAMP COURT, D.I.KHAN**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**SALAH-UD-DIN** ... **MEMBER (Judicial)**

*Service Appeal No.948/2014*

Date of presentation of Appeal.....14.07.2014  
Date of Hearing.....18.10.2023  
Date of Decision.....18.10.2023

**Mr. Muhammad Jameel S/O Muhammad Ibrahim.**  
R/O Zafarabad Colony near Gali Farooqiya Masjid, Dera Ismail Khan.  
Presently Naib Qasid at D.H.Q. T Hospital D.I.Khan  
.....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary Peshawar.
  2. **Secretary Health** Khyber Pakhtunkhwa, Peshawar.
  3. **Secretary Establishment and Administration Department**, Khyber Pakhtunkhwa, Peshawar.
  4. **Director General Health Service**, Khyber Pakhtunkhwa, Peshawar.
  5. **Medical Superintendent** D.H.Q Teaching Hospital Dera Ismail Khan.
  6. **District Accounts Officer** Dera Ismail Khan.
- .....(*Respondents*)

Present:

Mr. Muhammad Idrees Khan, Advocate.....For the appellant

Mr. Farhaj Sikandar, District Attorney .....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF MEDICAL SUPERINTENDENT D.H.Q TEACHING HOSPITAL D.I.KHAN NO. 6889 DATED 17.12.2013 VIDE WHICH ORDER OF APPOINTMENT THROUGH PROMOTION DATED 08.07.2013 THROUGH RECOMMENDATION OF DEPARTMENTAL SELECTION COMMITTEE, BY MEDICAL SUPERINTENDENT (PREDECESSOR) D.H.Q.T HOSPITAL D.I.KHAN WAS WITHDRAWN AND THE APPELLANT WAS AWARDED WITH MAJOR PENALTY OF REDUCTION TO THE LOWER POST.**  
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## JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:-** Brief facts of the case as alleged by the appellant in his appeal are that he was initially appointed as Naib Qasid (BPS-02) and was promoted/adjusted as JCT (Pathology) (BPS-09) vide order dated 03.01.2011, however vide order dated 09.12.2011, he was reverted to his original post i.e. Naib Qasid. The post of the appellant was re-advertised vide advertisement dated 14.05.2013 and on the recommendations of Departmental Selection Committee, he was appointed as JCT (Pathology) (BPS-09) vide order dated 06.07.2013, however his appointment order was withdrawn vide impugned order dated 17.12.2013 and he was reverted to his previous position. Feeling aggrieved of the impugned order dated 17.12.2013, the appellant filed departmental appeal, which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned and they were directed to submit comments. Respondents No. 1 to 5 contested the appeal by way of filing written reply/comments raising therein numerous legal and factual objections.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. Learned counsel for appellant contended that on the recommendations of the Departmental Selection Committee, the appellant was appointed as JCT (Pathology) (BPS-09) vide order dated 06.07.2013 after observing all the legal and codal formalities

but vide impugned order dated 17.12.2013 the appellant was wrongly and illegally reverted to his previous position. He next contended that the punishment can be awarded to a civil servant in case of any misconduct committed by the civil servant but in the instant case no misconduct has ever been committed by the appellant. He further argued that no ground for proceedings against the appellant had ever existed but despite that the appellant was awarded major punishment without conducting of any regular inquiry in the matter. He also argued that if any illegality was committed by the appointment Authority, then it was he to be made culpable and not the appellant as per settled law on the subject. In the last, he argued that the impugned order dated 17.12.2013 was passed on basis of mala-fide intention as well as without adopting legal procedure as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, the same is illegal and liable to be set-aside and the appellant may be reinstated in his original position as JCT (Pathology)(BPS-09) with all back benefits.

5. As against that learned District Attorney argued that the appointment order of the appellant dated 06.07.2013 was issued without observing legal and codal formalities i.e. Advertisement, tests and interview. He next argued that the appointing Authority one day before his retirement issued the appointment order of the appellant in violation of the rules. He further argued that the Departmental Selection Committee was constituted and in this regard the members of the Departmental Selection Committee

SCANNED  
A. V. J.  
Peshawar



denied their signatures on the minutes of meeting. He further contended that according to service rules, the post of JCT could only be filled through initial appointment and not by promotion. He also argued that certificate of JCT (Pathology) submitted by the appellant for his appointment against the post of JCT (Pathology) was not equal one issued by Government Institution or Private Institution affiliated with Medical Faculty, therefore, the appellant was not eligible for appointment against the said post. In the last, he argued that all the legal and codal formalities were fulfilled before passing the impugned order, therefore, the appeal in hand is liable to be dismissed.

6. A perusal of the record would show that initially the appellant was appointed as Naib Qasid (BPS-02). In the year 2013, a post of JCT fell vacant, which was advertised in the newspaper. The appellant also applied for the said post and was later on, vide order dated 06.07.2013, on the recommendations of Departmental Selection Committee, was appointed as JCT (Pathology) (BPS-09). After passage of some time, the appellant was issued show-cause notice on 20.08.2013, which is silent about the detail of irregularities/illegality committed by the Authority. It is only mentioned in the show-cause notice that the outgoing Medical Superintendent DHQ Teaching Hospital D.I.Khan, just before his departure, issued an order bearing No. 4417-20/PF dated 06.07.2023, appointing the appellant as JCT Pathology (BPS-9), without adopting the procedure for recruitment in accordance with the provisions of law & rules. Moreover, it has not been mentioned

in the show-cause notice that the appointing Authority was not competent or that the appellant lacked qualification or no advertisement was made as well as Departmental Selection Committee was constituted or the signatures of the members of Departmental Selection Committee were fake and bogus. The purpose of show-cause notice is always to afford sufficient opportunity to a civil servant to defend him but when a show-cause notice is given in vague terms without details, then show-cause notice loses its utility and the concerned civil servant shall be presumed to be prejudiced by not defending himself properly. The arguments of learned District Attorney regarding fake and bogus signatures of the members of the Departmental Selection Committee are not supported by any material. No inquiry committee was constituted nor any other occasion was highlighted by the department before whom or on which the said members of the committee have had the occasion of denial of their signatures and the appellant was also not given any chance to confront the denial of the members of the committee through due process. The impugned order is thus not sustainable in the eye of law and is liable to be set-aside. Keeping in view the facts and circumstances of the case, conducting of a proper inquiry is necessary for just and right decision of the issue in question.

7. Therefore, on allowing this appeal, the impugned order is set-aside with the direction to conduct proper inquiry before proceeding to take any departmental action against the appellant.

The appellant is reinstated in service for the purpose of inquiry with

the directions to the competent Authority to conduct inquiry in the matter strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of inquiry. Costs shall follow the events. Consign.

8. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 18<sup>th</sup> day of October, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court, D.I.Khan



**SALAH-UD-DIN**  
Member (Judicial)  
Camp Court, D.I.Khan