

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1231/2022
Date of Institution ... 11.08.2022
Date of Decision... 26.10.2023

Dr. Muhammad Khalil Akhtar, Health Service Academy, Director General
Health Services, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and 40 others. ... (Respondents)

MR. BILAL AHMAD KAKAIZAI,
Advocate --- For appellant.
MR. ASAD ALI KHAN,
Assistant Advocate General --- For official respondents.
MR. ASHRAF ALI KHATTAK,
Advocate --- For private respondent No. 5.
QAZI JAWAD EHSAN ULLAH,
Advocate --- For Private respondents
No. 7, 9 to 11, 13 to 24 & 26.

Service Appeal No. 1357/2023
Date of Institution ... 01.06.2023
Date of Decision... 26.10.2023

Dr. Muhammad Khalil Akhtar, Health Service Academy, Director General
Health Services, Peshawar. ... (Appellant)

VERSUS


Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and 09 others. ... (Respondents)

MR. BILAL AHMAD KAKAIZAI,
Advocate --- For appellant.
MR. ASAD ALI KHAN,
Assistant Advocate General --- For official respondents.
MR. ASHRAF ALI KHATTAK,
Advocate --- For private respondent No. 09

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. MUHAMMAD AKBAR KHAN --- MEMBER (EXECUTIVE)

CONSOLIDATED JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment

 we intend to dispose of both the above titled Service Appeals as
common questions of law and facts are involved therein.

2. Precise averments raised by the appellant in Service Appeal
bearing No. 1231/2022 are that he is performing duties in the

Health Services Management Cadre of the Government of Khyber Pakhtunkhwa created under the Khyber Pakhtunkhwa (Management) Service Rules, 2008, (hereinafter referred to as the *Service Rules, 2008*), brought in to effect on 11.12.2008, however notified in the official gazette on 02.11.2016. The *vires* of the Service Rules, 2008 were challenged by Dr. Sher Muhammad in Service Appeal No. 513/2010, which was disposed of by this Tribunal vide judgment dated 03.01.2012 with the observations that Rule-10 of the said rules does not provide any cushion period, therefore, the same may be modified and cushion period of two years be allowed to all those who wish to improve their qualification for joining the Management Cadre without effecting their seniority/service. The afore-mentioned judgment of this Tribunal was challenged through filing of Civil Appeals No. 320 to 324 of 2012 as well as Civil Appeals No. 126-P to 130-P of 2013 before Supreme Court of Pakistan, which were dismissed vide order dated 03.11.2016. Vide Notification dated 10.05.2017 the cushion period of two years was thus inserted through addition of second proviso in sub-rule 2 of Rule-10 of the Service Rules, 2008. In pursuance of amendment in the Service Rules, 2008, 147 doctors were properly inducted in Management Cadre vide Notifications dated 07.05.2018 and 10.09.2018. The afore-mentioned Notification dated 07.05.2018 was challenged by some of the doctors of the Management Cadre by way of filing Service Appeals No. 830 to 839 of 2018 before this Tribunal, which were decided vide judgment dated 22.03.2019, whereby the doctors, who were possessing the prescribed qualification at the relevant time but had



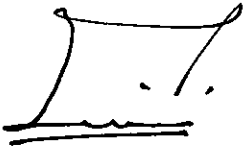
failed to opt for their absorption in to the Management Cadre before the coming into force of the amended rules were held ineligible for the purpose of absorption subsequent to amendments in the relevant rules. The afore-mentioned judgment dated 22.03.2019 was challenged through filing of Civil Petitions No. 2048 to 2057 of 2019 before the Supreme Court of Pakistan, which were dismissed vide order dated 07.11.2019. Vide Notifications dated 14.06.2021, 25.06.2021 and 06.07.2021 issued by Director General Health Services, Khyber Pakhtunkhwa, Peshawar, more than 50 disputed and irregularly inducted Doctors of Management Cadre were nominated and relieved from their duties for a period of 04 months for the purpose of attaining the mandatory promotional Training at Provincial Health Services Academy Peshawar without resolving the issue of seniority, therefore, the same were challenged by the appellant as well as others through filing of Writ Petition No. 2868/2021 before Peshawar High Court, Peshawar, which was disposed of vide judgment dated 22.09.2021. The final seniority list of doctors of Management Cadre as it stood on 01.01.2021 was notified by the Government of Khyber Pakhtunkhwa Health Department vide Notification dated 17.03.2022. The appellant was assigned serial No. 81 instead of serial No. 41 in the said seniority list, therefore, he challenged the same by way of filing departmental appeal/representation, however the same was not responded within the statutory period of 90 days, hence the instant appeal.

3. The grounds raised by the appellant in memo of Service Appeal No. 1357/2023 are almost the same as raised in Service

Appeal No. 1231/2022, however the prayer is distinguished which is copied as below:-

“that on acceptance of this Service Appeal the impugned promotion order be set-aside and appellant be considered for promotion ahead of the private respondents, with such other relief, as may deem fit in the circumstances of the case, may also be granted.”

4. Official respondents in both the appeals as well as private respondents No. 5, 7, 9 to 11, 13 to 24 & 26 in Service Appeal No. 1231/2022, while private respondent No. 9 in Service Appeal No. 1357/2023 contested the appeals by way of submitting respective replies/comments, raising therein certain legal as well as factual objections. Rest of private respondents in both the appeals were placed ex-parte.



5. Learned counsel for the appellant has contended that in view of Rule-10 of the Service Rules, 2008, the absorption/induction of the doctors from the General Cadre into Management Cadre was a one time exercise meaning thereby that all the doctors inducted into the Management Cadre shall be deemed as one time induction for the purpose of determination of their seniority but the same was not complied by the competent Authority. He further argued that the issue of creation of Management Cadre remained disputed due to non-publication of the concerned rules in the official gazette and was also challenged before various judicial forums, therefore, the matter of option was finally resolved in the year 2019, therefore, the one time exercise as mentioned in the Rule-10 of the Service Rules, 2008 shall be deemed to have been completed on 28.05.2019. He next argued that the names of his batch mates have

been mentioned at serial No. 37 to 40 of the impugned seniority list, while the name of the appellant has wrongly been mentioned at serial No. 81 instead of serial No. 41. He also argued that some of the private respondents were junior to the appellant in service, however they have been placed senior to the appellant in the impugned seniority list and have also been granted promotion on the disputed seniority list. He next argued that the rights of the appellant as guaranteed Articles 4, 9, 10-A, 25, 27 & 37 of the Constitution of Islamic Republic of Pakistan, 1973 have been violated and he has been treated with discrimination.



6. On the other hand, learned Assistant Advocate General assisted by respective learned private counsel for private respondents has argued that the judgment dated 03.01.2012 passed by this Tribunal in Service Appeal No. 513/2010 was challenged before the Supreme Court of Pakistan, which was dismissed vide judgment dated 03.11.2016, wherein it has been categorically held that seniority in Management Cadre will be reckoned from the date of joining service in the Management Cadre and not from any earlier date. It was next contended that *vires* of the Rules in all other matters relating to one time induction of doctors from General to Management Cadre notified in the year 2008-09 had been subject matter of various services appeals filed before this Tribunal, which were decided by holding the Rules as legal. It was also argued that private respondents were further promoted during their service in the Management Cadre, which promotions have not been challenged by the appellant before any forum. It was also contended that the grounds raised by the appellant in his appeals are vague in

nature, which would show that his claim is false and vexatious. It was next argued that the impugned seniority list has been drawn in accordance with relevant rules/law and the name of the appellant has been placed at due place, therefore, both the above titled appeals may be dismissed with cost.

7. Arguments have already been heard and record perused.

8. The appellant is aggrieved of the final seniority list of Members of service (BS-19) Health Department Government of Khyber Pakhtunkhwa as it stood on 01.01.2021 and notified vide Notification dated 17.03.2022 issued by Secretary Health Government of Khyber Pakhtunkhwa. The Khyber Pakhtunkhwa Health (Management) Service was created under the Service Rules, 2008 brought into effect on 11.12.2008. The Service Rules, 2008 were challenged by Dr. Sher Muhammad as well as other doctors through filing of Service Appeals No. 513/2010 to 517/2010 before this Tribunal, which were disposed of vide common judgment dated 03.01.2012 with the observations to provide two years cushion period to the doctors to achieve the qualification required for joining the Management Cadre. The afore-mentioned was challenged through filing of Civil Appeals No. 320 to 324 of 2012 as well as Civil Appeals No. 126-P to 130-P of 2013 before the Supreme Court of Pakistan, which were dismissed vide order dated 03.11.2016. Para-2 of the same is relevant to the controversy in question and is reproduced as below:-

*“As regard the submission of the learned ASC
for the appellants in Civil Appeals No. 320 to 324 of*

2012 he was unable to explain before us as to how the seniority of the appellants will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting them seniority but that of allowing them to acquire qualification for opting in management cadre. If the respondents at all join Management Cadre, their seniority will be counted 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. (Emphasis supplied) Thus, there seems to be hardly any reason muchless justifiable to interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellants. The Civil Appeals No. 320 to 324 of 2012 are, therefore, dismissed.”

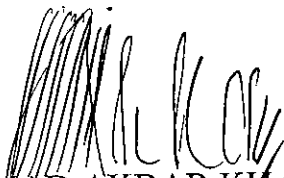



9. The above-reproduced para-2 of the order dated 03.11.2016 passed by the Supreme Court of Pakistan would show that the seniority of the doctors joining the Management Cadre will be counted from the date of their joining the said Cadre and not from the date of their initial appointment. The appellant had joined the Management Cadre vide Notification dated 07.05.2018, while the private respondents had joined the Management Cadre well before the date of absorption of the appellant in the Management Cadre. The Management Cadre is a separate cadre, therefore, Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 could not be attracted for determination of seniority *inter-se* of the appellant as well as private

respondents. The claim of the appellant regarding his seniority against private respondents is having no legal force and the appellant has failed to point out any illegality in the promotion order dated 21.12.2022.

10. Consequently, both the appeals being devoid of any merit stand dismissed. Parties are left to bear their own costs. Files be consigned to the record room.

ANNOUNCED
26.10.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)

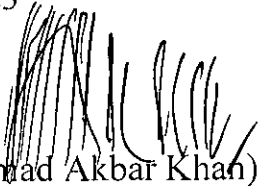

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
26.10.2023

Appellant in person present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Arguments have already been heard and record perused.

Vide our detailed consolidated judgment of today, separately placed on file, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.10.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

Naeem Amin