

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9070

Dated 15-11-23

C.M. Application No: _____/2023

IN

Service Appeal No. 1847 /2022


Aqib Zahoor

VS


Government of KP and Others

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APPELLANT / APPLICANT

Through


BARRISTER
MUHAMMAD HASSAAN ADIL

Dated: 10-11-2023

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

C.M. Application No: _____/2023

IN

Service Appeal No. 1847/2022

Aqib Zahoor

Son of Zahoor-ud-Din,
Resident of Kohat Road, House No. 08, Street No. 04, Mohalla Gulgasht Colony,
Peshawar

....APPLICANT

Vs

1. Government of Khyber Pakhtunkhwa

Through Chief Secretary, Civil Secretariate,
Peshawar

2. Secretary to Government of Khyber Pakhtunkhwa,

Health Department, Civil Secretariate,
Peshawar

3. Director General (DG),

Health Service, Warsak Road,
Peshawar

4. District Health Officer (DHO),

Grand Trunk Road,
Tehsil and District Peshawar.

....RESPONDENTS

**APPLICATION FOR INTERIM RELIEF THEREBY
RESTRAINING THE RESPONDENTS FROM MAKING
APPOINTMENTS AGAINST THE VACANCIES OF JUNIOR
CLERK IN THE DIRECTORATE GENERAL, HEALTH
SERVICES, KHYBER PAKHTUNKHWA.**

Respectfully Sheweth;

- 1) That the above-captioned appeal is pending for adjudication before this Hon'ble tribunal and is fixed for 14.12.2023.

- 2) That the brief facts necessitating the filling of instant application are that on 11.10.2023, the Departmental Promotion Committee, in its meeting, recommended the promotion of Naib Qasids to the post of Junior clerk (BPS-11) with immediate effect, which was duly followed and they were promoted to the said post on 30-10-2023 by the promoting authority.

(Copy of the impugned list of the Naib Qasids' promotion to the post of junior clerks is hereby annexed as Annexure – "A" respectively)

- 3) That the matter regarding the promotion of Class – IV to the post of junior clerk in Directorate Health department is already sub-judice before this Hon'ble tribunal, wherein on the previous date, the Hon'ble tribunal has ordered the respondents to produce the record of junior clerks posts and vacancies since 2010.

- 4) That the respondents tried to mislead this Hon'ble tribunal because in their reply / comments, submitted before this Hon'ble tribunal, they have specifically contended that not even a single vacant post of junior clerk is available in the respondent's department, in response to which the appellant submitted an application for bringing on record some documents regarding the availability of vacant posts in the department. However, the department is now, illegally, promoting junior employee / Naib Qasids to the post of Junior clerks just to fill up the vacancies, so that the department could contend regarding the non-availability of any post, which clearly transpires *mala fide* on part of the respondents.

- 5) That petitioner has prima-facie, a strong case and is very sanguine about its success, besides, balance of convenience also leans in favour of grant of interim relief.

- 6) That if the respondents were not restrained from promoting other employees and leaving the present appellant / applicant unpromoted despite his being eligible for promotion and no fault on his part, such act of the respondent's department would cause an irreparable loss to the present applicant / appellant.

- 7) Any other ground deemed appropriate would be raised at the time of arguments, with the permission of this Hon'ble tribunal.

PRAYER:

It is therefore, humbly prayed that on acceptance of this application, the impugned promotions to the post of junior clerk may kindly be suspended and the respondents be restrained from making promotions against the impugned posts till the final decision of the appeal.

Aas
APPLICANT / APPELLANT

Through

Hassan
BARRISTER
MUHAMMAD HASSAN ADIL

Dated: 10-11-2023

AFFIDAVIT

I, **Aqib Zahoor** Son of Zahoor-ud-Din, Resident of Kohat Road, House No. 08, Street No. 04, Mohalla Gulgash Colony, Peshawar, do hereby solemnly affirm and declare on Oath that the contents of accompanying Application are true and correct to the best to my knowledge and nothing has been concealed from this hon'ble tribunal.

Aas
DEPONENT





**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to the Director General Health Services Peshawar and not to any official by means E-Mail Address K.P.Kdhs@yahoo.com
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230

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OFFICE ORDER

Annexure 'A'

Consequent upon approval accorded by the Departmental Promotion Committee in its meeting held on 11/10/2023, under the Chairmanship of Director General Health Services Khyber Pakhtunkhwa, Peshawar, the following Matriculate Class-IV are hereby promoted to the post of Junior Clerk (BPS-11) against the vacant posts reserved under 33% quota with immediate effect:-

S. No	Name of Official	Present Place of Posting
01	Muhammad Adil	DGHS Office Peshawar
02	Gulrajud Din, Naib Qasid	DGHS Office Peshawar
03	Musarat Shah, Naib Qasid	DGHS Office Peshawar
04	Sadat Khan Naib Qasid	DGHS Office Peshawar
05	Shehzad Ali, Naib Qasid	DGHS Office Peshawar
06	Sikandar Khan, Naib Qasid	DGHS Office Peshawar
07	Abdul Aziz, Naib Qasid	DGHS Office Peshawar

On their promotion to the post of Junior Clerk (BPS-11) the following Posting/transfer are hereby ordered:-

S. No	Name of Officials	From	To
01	Muhammad Adil	Budget SNE (Merged area)	Ministerial Promotion Cell
02	Gulrajud Din, Junior Clerk	Homeo Section	Homeo Section
03	Musarat Shah, Junior Clerk	Gate No.4	HRMIS Section
04	Sadat Khan, Junior Clerk	Medical Section	Medical Section
05	Shehzad Ali, Junior Clerk	DG Staff	Personnel Section
06	Sikandar Khan, Junior Clerk	Public Health Section	Public Health Section
07	Abdul Aziz, Junior Clerk	DHO, Nowshera	DHO, Nowshera

Arrival / Departure should be submitted to this Directorate for record.

SD X X X X

Director General Health Services
Khyber Pakhtunkhwa Peshawar

No. 2784-90/Ministerial Promotion Cell

dated 30/10/2023

Copy forwarded to the.

- 1 AG Office Khyber Pakhtunkhwa, Peshawar.
- 2 Deputy Director (Accounts) DGHS, Peshawar.
- 3 District Health Officer, Nowshera.
- 4 Incharge Concerned Sections.
- 5 PA to DGHS Khyber Pakhtunkhwa, Peshawar.
- 6 Mr. Bilal Khan President Class-IV DGHS Peshawar.
- 7 Officials concerned.

For information and necessary action.

Director General Health Services
Khyber Pakhtunkhwa Peshawar

CS CamScanner

ATTN: TEL

Annexure "B"

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service appeal No.1847/2022

Diary No. 5213

Date: 9/15/23
Petitioner

Aqib Zahoor

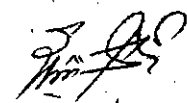
Versus

Govt of Khyber Pakhtunkhwa & Others

-----Respondents

INDEX

S. No	Description of Documents	Annexure	Page No.
01	Affidavit		01
02	Parawise Comments		02-03
03	Copy of Seniority List	A	04-6
04	Authority letter	B	7


Deponent

ATTACHED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1819 to1859 /2022.

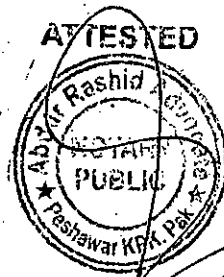
Haroon ur Raheed &Others Vs Govt: of KP (Health) -----Petitioner

AFFIDAVIT

I Dr, Mubarak Zeb khan S/O Mr, Alam Zeb Khan DHIS Coordinator, Office of DHO Peshawar, do hereby solemnly affirm and declare on oath that content of the instant replay are true and correct to the best of my knowledge & belief and nothing has been concealed from this honorable Court. Furthermore it is added that all the 41 service Appeals having same nature & having same stance /materials.

DEPONENT 

Dr, Mubark Zeb
DHIS Coordinator
Office of DHO Peshawar
NIC No: 17101-6493994-5



9/5/2023

ATTESTED 

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1847/2022.

Aqib Zahoor

-----Appellant

Versus

- 1: Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
- 2: Secretary Health, Govt of Khyber Pakhtunkhwa Peshawar
- 3: Director General Health Services Khyber Pakhtunkhwa Peshawar
- 4: District Health Officer, Peshawar.



-----Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 01 to 04.

Respectfully Sheweth:

Preliminary Objections:-

- 1. That the appellant has got neither cause of action nor did locus standi to file the instant appeal.
- 2. That the appellant has filed the instant appeal just to pressurize the respondents.
- 3. That the instant appeal is against the prevailing Law and Rules.
- 4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
- 5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
- 6. That the appellant has not come to this Honorable Tribunal with clean hands.
- 7. That the appeal is barred by law and limitation.
- 8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
- 9. That the instant appeal is bad for mis- joinder of unnecessary and non-joinder of necessary parties.
- 10. That there is no original or appellate order which is pre requisites of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 hence under 2006 SCMR 1630 the honorable Tribunal has no jurisdiction to adjudicate the matter.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

FACTS

- 1. Pertains to record.
- 2. Incorrect , Needless to mention that as the appellant is working at District level, his Seniority list is maintained in Respondent No.4 office and is attached as **Annexure-A**.
- 3. Correct to the extent of promotion of class-iv employees to the post of junior clerk on the basis of 33% reserved quota in accordance with the rules.

- 4. Incorrect. There is no vacant post available where the appellant may be promoted as junior clerk. It is worth to mention that no post of junior clerk has been advertised, nor did anyone recruited against the same.
- 5. Already explained in para-04.
- 6. Incorrect. Already replied in para 04 above. It is worth to mention that a joint departmental appeal has been filed in violation of the appeal rules therefore, the instant appeal is badly time barred.
- 7. No comments.

GROUNDS:-

- A: - Incorrect, as there is not a single vacant post of junior clerk (BPS-11) in the office of Respondent Department to which the appellant may be promoted.
- B: - Incorrect, the appellant is not entitled for promotion to the post of junior clerk as there is no vacant post of junior clerk in their share under 33% reserved quota.
- C: - Incorrect. The appellant has been placed at his proper place in the seniority list
- D: - The Respondents have already acted in accordance with law and rules.
- E: - Incorrect, already explained in above paras.
- F: - The respondents seek leave to raise additional grounds at the time of arguments.

It is therefore requested that on acceptance of the instant parawise comments the appeal of the appellant may kindly be dismissed.

Respondent No-01&2
 Chief Secretary through
 Secretary Health Khyber Pakhtunkhwa
 Peshawar

Respondent No-03
 Director General Health Services
 Peshawar

Respondent No-04
 District Health Officer
 Peshawar

Certified to be true copy

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Appeal: 23/08/2023
 Number of Pages: 2/-
 Copying Fee: 10/-
 Utility Fee: 5/-
 Total: 15/-

Name: _____
 Date of Receipt: 25/08/2023
 Date of Delivery: _____

Annexure - A (4)

Seniority List Of Class IV Employees Working Under DHO Peshawar

Sl No	Name	Father Name	NIC Number	Date of Entry in Job	Designation	Qualification
1	Zaffar Ali	Najaf Ali Shah	17301-1698582-3	7/5/1988	Naib Qasid	Matric
2	Tahir Shah	Amir Zada	17301-8905148-5	2/1/1992	Chowkidar	Matric
3	Muhammad Riaz	Nasar Ullah	17301-1675304-7	16/03/1995	Ward Orderly	Matric
4	Hamad	Shahid Hamid	17301-5090803-1	6/4/1997	Ward Orderly	BA
5	Ashfaq Ahmad	Sulaiman Khan	17301-1814298-7	5/1/1999	Chowkidar	Matric
6	Ahmad Jan	Ghazi Khan	17301-1274726-3	30/04/1999	Naib Qasid	FA
7	Salman Shah	Fazle Qadar	17301-7456183-7	9/1/2003	Ward Orderly	FA
8	Muhammad Zubair	Ibrahim	17301-8067632-3	22/11/2003	Naib Qasid	FA
9	Fazal Rabi	Sahar Gul	17301-9586454-7	11/8/2006	Ward Orderly	Matric
10	Sahibzada Aamir	Mukhtiar Ahmad	17301-05982459	12/8/2006	Ward Orderly	BA. Health Diploma
11	Muhammad Ishfaq	Mir Akbar	17301-9823680-1	28-11-2006	Ward Orderly	Mphil Microbiology+DIT
12	Sohail Ashiq	Muhammad Ashiq	17301-4002508-5	12/1/2009	Sanitary Petrol	BA
13	Ghulam Mujtaba	Ghulam Mustafa	17301-7148125-9	26/12/2009	Ward Orderly	BA
14	Ijaz Ahmad	Taza Gul	17301-5419523-7	31-12-2009	Chowkidar	FA
15	Munir Hussain	Faqir Hussain	17301-1311673-1	23/02/2010	Naib Qasid	Matric
16	Naveed Khan	Muhammad Nawaz Kham	17301-6584400-1	3/3/2010	Naib Qasid	BA
17	Muhammad Ibrar	Gul Mast Khan	17301-4408732-9	4/3/2010	Behishti	SSC
18	Muhammad Sulaiman	Musafar	17301-6117689-7	24-05-2010	Behishti	BA
19	Sajjad Ahmad	Liaqat Ali Khan	17301-8599458-3	13-06-2011	Behishti	FA
20	Torgat Auzal	Javid Akhtar	16101-7487588-9	19-10-2011	Chowkidar	FA
21	Syed Kifayat Shah	Naurooz Shah	17301-1458161-3	31/12/2011	X-ray Attendent	MA+ Health Diploma
22	Saad Ullah Khan	Sahib Zada	17301-16557279	21/12/2011	Chowkidar	BA
23	Abdul Shahab	Abdul Jabbar	17301-7776929-5	27/12/2012	Behishti	MSC Economics
24	Muhammad Imran	Qaleem Ullah	17301-3090264-1	29/12/2012	Chowkidar	MA
25	Asif Naveed	Naveed Ahmad	17301-5904442-3	31/12/2012	X-ray Attendent	FA

ATTACHED

(9)

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26	Muhammad Altaf	Subhan ullah				
27	Shahid Khan	Faqir Gul	17301-5887445-5	29-04-2013	Behishti	DAE
28	Asfandyar Khan	Musharaf Khan	17301-3550466-9	4/2/2014	Ward Orderly	FSC+ Surgical Diploma
29	Shams Ul Athhar	Shams Ul Qamar	17301-6996238-7	4/2/2014	Ward Orderly	BA
30	Zia-ul-islam	Muhammad Qayum	17301-8058948-7	27-03-2015	Behishti	SSC
31	Salman Misbah	Misbah Ud din	17301-5067106-3	30/03/2015	Ward Orderly	MA+ Health Diploma
32	Shahid Islam	Faqir Gul	17101-4426272-5	7/4/2015	Behishti	BA
33	Muhammad Sulaiman	Qabil Khan		16-1-2016	Ward Orderly	Surgical Diploma
34	Murshid Ali	Gohar Khan	17301-8449980-3	3/8/2016	Ward Orderly	FSC
35	Nadeem Khan	Sher Zaman	17301-4164590-9	3/8/2016	Naib Qasid	BSc
36	Fareed Ullah	Afridi Khan Safi	17301-8762303-1	12/8/2016	Behishti	FA
37	Umair Khan	Pervaiz Khan	17301-4505337-1	3/8/2016	Naib Qasid	BA
38	Sabir Shah	Zaiban Shah	17301-8066889-5	29/05/2017	Naib Qasid	FA
39	Waqar Younis	Shafaras Khan	17201-6576098-3	19/01/2018	Chowkidar	Matric+ Health Diploma
40	Syed Ghous Ali Shah	Syed Abid Shah	17301-9197840-5	19/01/2018	Ward Orderly	FSC
41	Muhammad Arif	Faiz Muhammad	17301-1800560-9	19/01/2018	Ward Orderly	MA
42	Muhammad Ihtisham	DilShad Khan	17301-2618886-7	19/01/2018	Ward Orderly	BSc
43	Zeeshan Ahmad	Fareed Khan	17301-2621626-3	19/01/2018	Ward Orderly	M.COM
44	Faisal Ahmad	Habib ur Rehman	17301-5237207-1	20/02/2018	Ward Orderly	BA
45	Muhammad Saboor	Manzoor Khan	17301-6599340-5	3/10/2018	Chowkidar	FA
46	Farooq Haidar	Khan Bahadur	17301-9784416-5	3/10/2018	Chowkidar	FA+ Health Diploma
47	Imran Khan	Izzat Khan		3/10/2018	Ward Orderly	FA
48	Rahim Shah	Sardar Khan	17101-1892366-1	30/10/2018	Chowkidar	FA+Electric Diploma
49	Shehryar Khan	Faqir hussain	17301-8692584-1	27/10/2020	Ward Orderly	DAE+ DIT
50	Jehan Ullah	Ihsan Ullah	17301-2332817-7	27/10/2020	Ward Orderly	MA+DIT Diploma
			17301-1797449-1	27/10/2020	Ward Orderly	FA

ATTESTED

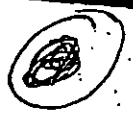
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51	Amir Khan	Zaka Ullah	17301-0416153-5	27/10/2020	Ward Orderly	FSc
52	Muhammad Nouman	Noor Muhammad	17301-3280446-5	27/10/2020	Ward Orderly	BA
53	Muhammad Arif	Usman Khan	17301-86494820-9	27/10/2020	Ward Orderly	BA
54	Mueen Qasmi	Muhammad Hanif	17301-6540441-7	27/10/2020	Ward Orderly	MBA
55	Imran Khan	Abdul Sattar	17301-6952992-5	27/10/2020	Chowkidar	Matric
56	Shahid Ahmad	Habib ur Rehman	17301-6701436-9	27/10/2020	Ward Orderly	FA
57	Haroon Ur Rashid	Muhammad Dawood	17301-8767271-3	27/10/2020	Chowkidar	BA
58	Aqib Zahoor	Zahoor Ud Din	17301-5569170-9	27-10-2020	Chowkidar	Matric
59	Tahir Hafeez	Abdul Hafeez	17301-5242528-1	27-10-2020	Ward Orderly	B.COM
60	Hamza Shah	Jalal Shah	17301-6527188-7	27-10-2020	Ward Orderly	FA
61	Muhammad Tayyab	Masood Ahmad	17301-1955764-1	27-10-2020	Ward Orderly	FSc+Health Diploma
62	Shehryar Hussain	Nighah hussain	17301-6255930-7	27-10-2020	Ward Orderly	BSC Computer Science
63	Momin Khan	Johar Ali	17301-7058253-5	27-10-2020	Ward Orderly	SSC
64	Imran Shah	Sabir Shah	17301-3206617-7	8/12/2020	Ward Orderly	FSC
65	Anwar ul Haq	Zia Ul Haq	17301-5541278-7	2/3/2021	Behishti	FA
66	Salman Khan	Dilawar Khan	17301-3443294-5		Ward Orderly	Matric
67	Muhammad Aftab udin	Shahab u din	17301-4947979-7	27-10-2020	Chowkidar	Matric

ATTEST



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**OFFICE OF THE DISTRICT HEALTH OFFICER
PESHAWAR**
Phone No. 091-9225387

AUTHORITY LETTER

Syed Mastan Ali Shah Litigation Assistant, Office of DHO Peshawar,
NIC No: 17101-0365818-9 is authorized to submit parawise comments reply in the
case Service appeal NO.1847/2022 titled Aqib Zahoor Vs Govt of KP in Service
Tribunal, Peshawar.

*District Health Officer,
Peshawar*

District Health Officer
Peshawar

ATTACHED

بعدالت

Hon'ble Service Tribunal, Psh.

Appellant / Applicant

2023 منجانب

مورخہ 13 / 11 / 2023

Asib Zahoov بنام Govt of KP
of others

مقدمہ Stay App.

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لیشاور کیلئے لیسٹر محمد حسن عادل

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے کے تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Attested
Accepted
P. Hassan

2023ء

ماہ نومبر

13

المبرقوم

العبد د گ واه العبد

کے لئے منظور ہے۔

لیشاور

مقام

عالمگیر لیسٹر محمد حسن عادل