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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 1558/2023

Faizullah Khan.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1558 OF 2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9782

Dated 08-12-2023

Faizullah Khan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

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 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 the appeal 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 instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Correct to the extent that the appellant joined Health Department as Junior Clerk on 16/01/1982 and was retired from Service as Office Assistant (BS-16) on 11/12/2022 on attaining the age of superannuation.
2. Pertain to record.
3. Pertain to record.
4. Pertain to record.
5. Correct to the extent that the appellant had submitted an appeal for promotion to the post of Office Superintendent (BS-17) but the same was kept pending till the advice of the Government regarding processing of promotion case of Ministerial staff on existing Service Rules for which a letter was sent to the Government of KP Health Department vide this Directorate letter No. 6149-51/Personnel dated 06/10/2021 (Annex-A).

6. Correct to the extent that the appellant has again submitted an application for his promotion. The promotion case of Office Assistant (BPS-16) was processed i.e. Seniority list and other pre-requisite documentations like ACRs/PERs, working papers etc. were completed and sent the case to the Government of Khyber Pakhtunkhwa Health Department for consideration vide this Directorate letter No. 13548/Promotion Cell dated 08-12-2022 for placing before the DPC meeting, but the name of appellant was not included in the panel as he was retired from Government Service on 11/12/2022. (Annex-B).
7. Though, the appellant was eligible for promotion but retired from Government Service before the DPC meeting thus as per rules he was not considered for promotion.
8. That on his appeal, his promotion case for notional promotion was prepared and sent to the Government for consideration vide this Directorate letter No.1294/Ministerial Promotion Cell dated 13/03/2023. DPC meeting was called on 23/05/2023 but the DPC reached to the conclusion that the subject case for notional promotion was not entertainable on the ground that the official intended to be promoted already stands retired and therefore, does not exist within the cadre strength. The committee therefore recommends that the subject case may be return to DGHS as the same is not covered under Para-VII of Promotion Policy 2009 of the Provincial Government Khyber Pakhtunkhwa, which stipulates that in respect of Civil Servants who retired(or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the Competent Authority, their promotion shall be calculated as per pay which they would have received had they not retired/expired.(Copy of minutes of the DPC Meeting held on 23/05/2023 as (Annex-C))
9. Pertain to record.
10. As explained in Para-08 above.


GROUND.

- A. Incorrect. The replying respondents have acted as per law, rules and principle of natural justice. The appellant has already been considered for notional promotion however, the same was not permissible under the promotion policy 2009 hence, he was not recommended for notional promotion.
- B. Already replied in para "A" above. However, as per dictum laid down in **2010 PLC CS 924SC** "Every case has different facts and circumstances needs to be decided on its own merits".
- C. Incorrect. Already replied in para "A" above.
- D. Incorrect. As explained in Para 08 of the Facts.
- E. Incorrect. Already replied in para "B" above.
- F. Incorrect. Already replied in para "B" above..
- G. Incorrect. Already replied in para "A" above.
- H. Incorrect. Already replied in para "08" of the Facts.
- I. Incorrect. Already replied in para "B" above.
- J. Incorrect. Already replied in para "08" of the Facts.
- K. Incorrect. Already replied in para "08" of the Facts.
- L. Incorrect. Already replied in para "A" above.
- M. Incorrect. Already replied in para "08" of the Facts.


- 3
- N. Incorrect. Already replied in preceding paras.
 - O. Incorrect. Already replied in para "08" of the Facts.
 - P. Incorrect. Already replied in para "A" above.
 - Q. Incorrect. Already replied in para "B" above.
 - R. Incorrect. Already replied in para "08" of the Facts.
 - S. Incorrect. Already replied in para "B" above.
 - T. Incorrect. Already replied in para "B" above.
 - U. Incorrect. Already replied in para "B" above.
 - V. Incorrect. Already replied in para "08" of the Facts.
 - W. Incorrect. Already replied in para "A" above.
 - X. No comments. 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 on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


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

Mahmood Aslan
SH KPK


Director General Health Services
Khyber Pakhtunkhwa
(Respondent No. 03)

Dr SHAUKAT ALI
D.G.H.S KPK



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR

E-Mail Address: nyl@ghs.khyber.gov.pk office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax# 091-9210230
No. 6/49-59 / Personnel Dated: 6/10 / 2021

To,

The Secretary to Govt. of Khyber Pakhtunkhwa
Health Department Peshawar.

Subject: **PROMOTION ON EXISTING SERVICE RULES OF MINISTERIAL STAFF.**

Sir

Kindly refer to the subject noted above and with reference to the meeting of APCA leaders with the undersigned in connection with prolong pending promotion cases of Ministerial Staff of Health Department.

In this connection, it is stated that last promotion of Office Assistant to the post of Superintendent was made in 2015 since then no promotion can be processed due to want of amendment in the Service Rules in the light of Finance Department instructions.

The amendment in the Service Rules were proposed and submitted to Government in the year 2018. Since then the case of Service Rules are pending in spite the laps of 03-04 years and the eligible Ministerial Staff are deprived of their due rights of promotion.

The Ministerial Staff due for promotion are retiring/ died without getting promotion, which is injustice with them and their families.

In the light of aforesaid facts it is requested kindly allow this Directorate to process the promotion cases of Ministerial Staff on the existing Service Rules till the finalization of proposed amendment in the Service Rules of Directorate Cadre & Sub-Cadre. This will minimize the grievances of the employees and will work more devotedly in the future.

C.C

Attested

[Signature]
DIRECTOR GENERAL HEALTH
SERVICES, K.P PESHAWAR.

- 06/11/2021*
1. Chairman APCA Pakistan with reference to his meeting dated 06.10.2021.
 2. District President APCA Peshawar.

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DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR
No 13548 /Promotion Cell
Dated 8/10/2022

The Secretary to Govt: of Khyber Pakhtunkhwa,
Health Department Peshawar

SUBJECT: WORKING PAPERS FOR PROMOTION OF OFFICE ASSISTANT
BPS-16 TO THE POST OF OFFICE SUPERINTENDENT BPS-17.

Dear Sir,

Kindly refer to the subject noted above and to submit working papers for promotion of Assistant BS-16 to the post of Superintendent BS-17 (7 copies) for further necessary action and to request to arrange DPC meeting.

Shahen Afzale
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR.

Affected

Annex-C
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MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE
HELD ON 23.05.2023

A meeting of the Departmental Promotion Committee was held on 23/05/2023 at 02:00 PM under the Chairmanship of Secretary to Govt. of Khyber Pakhtunkhwa Health Department, in the Committee Room of Health Department.

The following attended the meeting:-

1.	Mr. Mahmood Aslam	Secretary to Govt. of Khyber Pakhtunkhwa, Health Department	Chairman
2.	Mr. Niaz Muhammad	Additional Secretary (MTI), Health Department, Khyber Pakhtunkhwa	Member
3.	Syed Habib ul Hassan Gillani	Deputy Secretary (Reg-I), Establishment Department, Khyber Pakhtunkhwa	Member
4.	Mr. Zia Ullah	Deputy Secretary (Litigation), Health Department, Khyber Pakhtunkhwa	Member
5.	Dr. Fazal Rehman	Deputy Director (HR) DGHS, Khyber Pakhtunkhwa.	Member
6.	Mr. Mukaram Khan	Section Officer (SR-III), Finance Department, Khyber Pakhtunkhwa	Member
7.	Mr. Tariq Saleem	Section Officer (E-VI), Health Department, Khyber Pakhtunkhwa	Member

The working paper prepared by DGHS regarding Notional Promotion of Mr. Faizullah Khan, Ex-Assistant BPS-16 to the post of Superintendent (BPS-17) in Health Department was perused/discussed during the meeting.(F/A).

Dr. Fazal Rehman, Deputy Director HRM, apprised the forum that Mr. Faizullah Khan, Ex-Assistant (BPS-16) has got retired from Government service on attaining the age of superannuation on 11.12.2022, therefore, his name was not forwarded to the DPC for consideration during its meeting held on 23/05/2023 in respect of promotion of Assistant (BPS-16) to the post of Superintendent (BPS-17).

The committee thoroughly examined/checked the available record and after detailed discussion/deliberation reached to the conclusion that the subject case for Notional Promotion was not entertainable on the ground that the official intended to be promoted already stands retired and therefore, does not exist within the cadre strength.

Attested



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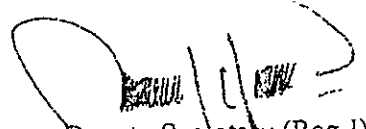
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The Committee therefore recommends that the subject case may be returned to the DGHS, as the same is not covered under Para-VII of Promotion Policy 2009 of the Provincial Government of Khyber Pakhtunkhwa, which stipulates that in respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the Competent Authority, their promotion shall be calculated as per pay which they would have received had they not retired/expired.

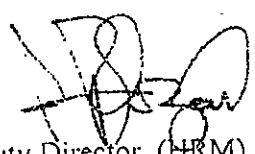
The meeting ended with a vote of thanks from and to the Chair.

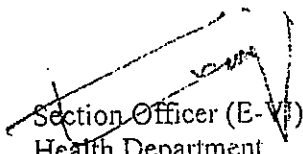

Additional Secretary (MTI)
Health Department
Khyber Pakhtunkhwa
(Member)



Deputy Secretary (Reg-I)
Establishment Department
Khyber Pakhtunkhwa
(Member)


Deputy Secretary (Litigation)
Health Department
Khyber Pakhtunkhwa
(Member)


Section Officer (SR-III)
Establishment Department
Khyber Pakhtunkhwa
(Member)


Deputy Director (HRM)
Directorate General Health
Services Khyber
Pakhtunkhwa (Member)


Section Officer (E-VI)
Health Department
Khyber Pakhtunkhwa
(Member)


Secretary to Government of
Khyber Pakhtunkhwa
(Chairman)

Attested


Draft

Amended

J

Promotion Policy

In order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "North-West Frontier Province Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

Basic Scale 18 :	5 years' service in BS-17
Basic Scale 19 :	12 years' service in BS-17 & above
Basic Scale 20 :	17 years' service in BS-17 & above

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

Basic Scale 19 :	7 years' service in BS-18
Basic Scale 20 :	10 years' service in BS-18 and above. or 3 years' service in BS-19.

II. Linking of promotion with training:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales:

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College Lahore for promotion to BS-21

Affected
[Signature]

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely

within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

(a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.

(b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

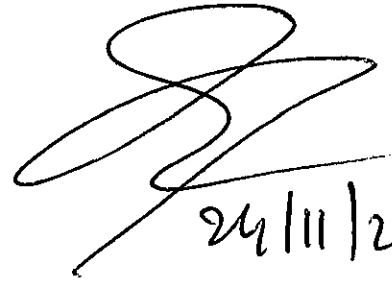
IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion forum which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

Attested


F.52

A stylized, cursive handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

24/11/2023

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 1558/2023

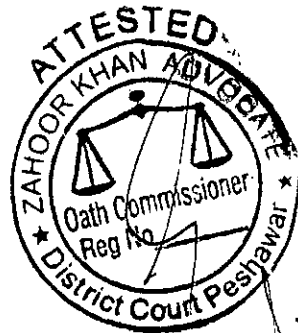
Faizullah Khan.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Dr. Shaukat Ali, Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.




Depoñent

DR SHAUKAT ALI
DGHS KPK

RESP-110-3



**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 name
Office # 091-9210269 Fax # 091-9210230*

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AUTHORITY LETTER

Mr. Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in Service Appeal No. 1558/2023 titled Faizullah Khan VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned at Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar.**

preparation of para-wise comments by Departments on behalf of Chief Secretary, S&GAD and other Respondents in the Court cases.

Reference S&GAD's circular letter No.SO(Lit)S&GAD/ INS.MISC/97, dated 25.5.1998 which makes it incumbent upon all concerned to file joint para-wise comments in the Courts in cases where more than one Departments/Offices are involved or where Chief Secretary NWFP and Secretary S&GAD are also respondents.

2. It has, however, been observed that most of the Departments, in flagrant disregard to the above policy, prepare and submit separate parawise comments instead of joint parawise comments, which results not only in delays in the submission of joint parawise comments but also jeopardizes interest of the Government in Courts when comments/replies having differences of opinion between the Governments are filed in the Courts.

3. I am, therefore, directed to request once again that all concerned may kindly be directed to strictly observe the above policy in cases where more than one Departments are involved or the Chief Secretary NWFP and Secretary S&GAD are also respondents. In such cases joint parawise comments should invariably be prepared by the Administrative Departments concerned and shall be got vetted by the Advocate General NWFP/Government Pleader, as the case may be. Fair copies of joint parawise comments, after signature of Administrative Secretary concerned and other respondents shall be furnished to S&GAD for signature of the Chief Secretary NWFP or Secretary S&GAD as the case may be.

(Authority:-SO(Lit)S&GAD/4-19/97. Dated 2nd Sept.1998.)

Signing of para-wise comments etc in service appeals filed in the NWFP Services Tribunal by civil servants.

I am directed to refer to the subject noted above and to say that pursuant to Rule-12(2) of NWFP Services Tribunal Rules, 1974, the competent authority has been pleased to authorize the Administrative Secretaries concerned or subordinate officer to be nominated by the Administrative Secretary to sign para-wise comments etc on behalf of the Chief Minister, NWFP, as the case may be in cases of service appeals filed by the Civil Servants before the NWFP Services Tribunal.

(Authority; No.SORI(S&GAD)4-2/02, dated 15.1.1999)

Signing of parawise comments etc in service appeals.

I am directed to refer to the subject noted above and to state that in partial modification of this Department letter No.SOR-I(S&GAD)4-2/82, dated 28th April 1999, the competent authority has been pleased to authorize the Additional Secretary (Judicial) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the NWFP Services Tribunal on behalf of Chief Secretary, NWFP and Secretary, Establishment NWFP.