

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

**Service Appeal No. 545/2022**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Hamayun, PHC/Clinical Technologist (MCH/Pathology) (BS-17)  
Moulvi Ameer Shah, Memorial Hospital, Peshawar.....(*Appellant*)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Govt. of Khyber Pakhtunkhwa Health Department, Civil Secretariat, Peshawar.
3. The Director (Human Resources) Medical Teaching Institution/LRH, Peshawar.....(*Respondents*)

**Present:-**

MUHAMMAD AMIN AYUB,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.

Date of Institution.....14.04.2022  
Date of Hearing.....02.11.2023  
Date of Decision.....02.11.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of this appeal, the impugned Notifications dated 06.04.2022 may kindly be set aside and the appellant be promoted to the post of PHC/Clinical Technologist (MCH/Pathology) (BS-17) with effect from the date of occurrence*

*of the subject vacancy i.e. 05.09.2016 with all back benefits instead of the date of Notification dated 05.11.2021.”*

02. Brief facts of the case are that the appellant joined the respondent department as Junior Clinical Technician Pathology in the year 1990 and presently serving in BPS-16; that vide Notification dated 10.05.2016, the respondent department formulated Service Rules for the entire Paramedical Staff wherein at Serial No. 24 the post of Technologist (BPS-17) is to be filled 20% by promotion on the basis of seniority-cum-fitness from amongst the Chief Technicians (BPS-16), Senior Technicians (BPS-14) and Technicians (BPS-12) having the qualification of second class Bachelor Degree in the relevant Technology with 3 years service; that on promulgation of the Service Rules, the respondent department circulated letter dated 05.09.2016 directing all the relevant quarters to submit the names of qualified Paramedics holding degree for the purpose of promotion; that the name of the appellant was forwarded and he was at serial No. 24 of the seniority list; that vide Notification dated 01.02.2018 and 23.02.2018 Paramedical staff and other technologists were promoted to BPS-17 whereas the case of the Paramedical staff in Pathology was pending due to unknown reasons; that a working paper for the promotion of Paramedical staff in Pathology was prepared for the purpose of their promotion against 124 posts wherein the name of the appellant is reflected at serial No. 23, similarly synopsis and certificate dated 13.02.2019 were also forwarded to the relevant quarter; that the appellant approached the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 1831-P/2020 for the requisite promotion but during the pendency of his Writ Petition, the respondent department issued

the impugned Notification dated 05.11.2021 whereby the appellant was promoted to the post of PHC/Clinical Technologist (MCH/Pathology) BS-17 with immediate effect instead of the date of occurrence of vacancy i.e. 05.09.2016; that the appellant withdrew his Writ Petition which was allowed on 25.01.2022. Feeling aggrieved from the impugned Notification dated 05.11.2021, the appellant filed departmental appeal on 09.02.2022 which was regretted vide impugned appellate order dated 06.04.2022, hence preferred the instant service appeal on 14.04.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for official respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant is eligible, senior, well qualified for promotion to next higher grade but for no valid and justified reasons his case for promotion was withheld which caused financial loss; that the unlawful omission on the part of respondents cannot be justified under any cannon of law; that the appellant was entitled for promotion but his case was deliberately delayed and in quite similar circumstances other categories employees were promoted while the appellant was willfully ignored which is against the fundamental rights of the appellant; that Article-25 of the Constitution of the Islamic Republic of Pakistan, 1973 considers all citizens equal before law and entitled to equal protection of law. That it is clear from the record that the case of Petitioner was timely forwarded for promotion to the

post of BPS-17 but the matter was deliberately not taken into consideration without any legal justification by the concerned quarter, therefore, the same is clear contravention of the instructions of the Respondent Department. That the impugned appellate order dated 06.04.2022 does not qualify the condition of Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules 1986 read with Section-24A of the General Clauses Act, 1987 as the Departmental Appeal of the appellant has not been decided by the appellate authority without giving reasons.


05. Learned District Attorney on the other hand contended that the appellant was at S No. 24 of the seniority list but in 2016/17 only 5 vacant post (20% reserved quota for degree holders) were available therefore he was not in the promotion zone being junior hence he was not considered for promotion. That the seniority list of pathology Degree holders was disputed, therefore, the promotion was not made in the Pathology cadre. Moreso, vacant posts were not available in the budget book in 2018. That as per Notification of the Finance Department Khyber Pakhtunkhwa, after ratio enhancement of the posts of Paramedics the service Rules were required to be amended. The service rules of Paramedics were amended in November 2020, therefore the promotions were not made during the year 2019. The appellant was promoted to BPS-17 on 05.11.2021 after availability of the necessary posts as well as required revised service rules as per direction of Finance Department. It is worth to mention that the appellant was promoted with immediate effect as per promotion policy of the provincial government.

06. The claim of the appellant is that he was eligible for promotion in the year 2016 but he was not promoted to the post of Clinical Technologist Pathology (BS-17) despite availability of posts. However scrutiny of record reveals that the appellant stood at serial No. 28 of the seniority list. There were only 05 posts lying vacant in the promotion quota to which the appellant belongs, therefore, in order of seniority five colleagues of the appellant were promoted who were senior to the appellant. Another claim of the appellant is that after restructuring of the Paramedical staff and up-gradation of the post in accordance with the cadre strength in the relevant Paramedical Technologies in 2018, his promotion case was unnecessarily delayed until September 2021. Record transpires that the provincial government vide Notification dated 15.05.2018 upgraded/created 69 posts of Clinical Technologist Pathology (BS-17) with the direction that the post be filled after amendment in service rules. The service rules were amended in November, 2020. Moreover, record also reveals that seniority list of the category of employees of the appellant were disputed and as per promotion policy the seniority list is required to be undisputed for consideration of promotion of government employees. After creation of posts in 2018, issuance of final seniority and necessary amendment in the service rules making provision for promotion of the Paramedical staff therein, the appellant alongwith his 27 other colleagues (all senior to him) were promoted to the post of Clinical Technologist Pathology (BS-17) on 05.11.2021. This reveals that there were valid reasons for delay in promotion of the appellant and his other colleagues.

07. In view of the above findings we do not find any reason to intervene in the matter of promotion of the appellant and the instant appeal stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 02<sup>nd</sup> day of November, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)

ORDER


02.11.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, we do not find any reason to intervene in the matter of promotion of the appellant and the instant appeal stands dismissed. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 02<sup>nd</sup> day of November, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)