

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 270/2016

Date of Institution ... 15.1.2016

Date of Decision ... 28.08.2017

Dr. Muhammad Nazir, Senior Medical Officer BPS-18,  
Presently posted at Agency Headquarters Hospital Landi Kotal.

... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar.
3. Director General Health Khyber Pakhtunkhwa Peshawar.
4. Director Health Services, FATA Secretariat, Peshawar.

... (Respondents)

Mr. Yasir Saleem,  
Advocate

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For appellant.

*Jawid*  
Mr. Ziaullah,  
Deputy District Attorney

...

For respondents.

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Mr. GUL ZEB KHAN  
Mr. MUHAMMAD HAMID MUGHAL

...

MEMBER

...

MEMBER

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 15/1/2016 has been lodged by Dr. Muhammad Nazir, hereinafter referred to as appellant, under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the order dated 2/6/2015 vide which the promotion of the appellant from the post of Senior Medical Officer BPS-18 to Principal Medical Officer BPS-19 has been withdrawn. The appellant filed departmental appeal against the impugned order on 2/6/2016 which was rejected vide order dated 3/12/2015 and hence this appeal.

2. Brief facts of the case giving rise to the instant appeal are that the appellant was initially appointed as Medical Officer BPS-17 on 6/12/1987. During the course of his service the appellant got promotion to the post of Senior Medical Officer BPS-18. That subsequently the respondent department initiated the process of his promotion from Senior Medical Officer (BPS-18) to the post Principal Medical Officer (BPS-19). For this purpose, a working paper for PSB was prepared, which included the name of the appellant. Accordingly, the case was considered by the PSB and the appellant alongwith others was recommended for promotion to BPS-19 as Principal Medical Officer. In the meanwhile, the respondent department conducted an inquiry against the appellant on the charges of trying for promotion to BPS-19 on extraneous grounds and submitting fraudulently signed/countersigned PERs for the years 2006 and 2013 from unconcerned/junior officer instead of the relevant authority/then Secretary Social Sector Department, FATA Secretariat. On conclusion of the said enquiry, the appellant was awarded minor penalty of stoppage of three annual increments for three years vide office order dated 2/6/2015.

3. Learned counsel for the appellant argued at the bar that while conducting the inquiry, mandatory provisions of the law and rules have badly been violated by the respondents. That neither proper inquiry has been conducted against the appellant, nor proper procedure has been followed before awarding the penalty of stoppage of three annual increments for three years to the appellant. Similarly inquiry officer, on whose recommendation the appellant was punished, has neither properly associated the appellant with the inquiry proceedings nor recorded statements of the witnesses in the presence of the appellant. Besides that the enquiry officer has also not provided him the opportunity of cross examination of the witnesses. Learned counsel for the appellant further argued that since the impugned order is illegal and without any justification, hence the same be set-aside.

4. In rebuttal, learned Deputy District Attorney argued before the court that appellant has submitted fraudulently signed/countersigned PERs for the performance years 2006 & 2013 to the Provincial Health Department, which were signed from a junior/

irrelevant/unconcerned officer instead of the then Secretary Social Sector Department FATA Secretariat and thus tried for promotion from BPS-18 to BPS-19 on extraneous grounds. He further contended that the enquiry conducted was in accordance with law and rules, because proper charge sheet/statement of allegation and show cause notice were issued to the appellant by the competent authority. Hence the appellant was rightly proceeded against and therefore appeal of the appellant may be dismissed with costs.


5. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record available on file.

6. Perusal of record would reveal that this matter is closely connected with the subject matter/question of law as dealt with in detail in the other service appeal of the said appellant bearing No. 1430/2015, and wherein the impugned order has been set-aside.

7. Keeping in view the judgment in the aforementioned case, the impugned order in this case (i.e Service Appeal No. 270/2016) is also set aside and the respondent department is directed to conclude the promotion case of the appellant from BPS-18 to BSP-19 from the stage where it was stopped/withdrawn, by giving him proper seniority from the date when his erstwhile colleagues were promoted to BPS-19, with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

28.08.2017

  
(Muhammad Hamid Mughal)  
MEMBER

  
(Gul Zeb Khan)  
MEMBER

Counsel for the appellant and Mr. Ziaullah,  
Deputy District Attorney for the respondents present.  
Arguments heard and record perused.

Vide our detailed judgment of today placed  
on file, the impugned order in this case (i.e Service  
Appeal No. 270/2016) is also set aside and the  
respondent department is directed to conclude the  
promotion case of the appellant from BPS-18 to BSP-  
19 from the stage where it was stopped/withdrawn, by  
giving him proper seniority from the date when his  
erstwhile colleagues were promoted to BPS-19, with all  
back and consequential benefits. Parties are left to bear  
their own costs. File be consigned to the record.

ANNOUNCED

28.08.2017



**(Muhammad Hamid Mughal)**  
MEMBER

  
**(Gul Zeb Khan)**  
MEMBER

08.08.2017

Appellant in person present. Mr. Yar Gul, Senior Clerk alongwith Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments could not be heard as lawyer community is on general strike. Adjourned. To come up for arguments on 28.08.2017 before D.B.



(Muhammad Amin Khan Kundi)  
Member (J)



(Muhammad Hamid Mughal)  
Member (J)

13.02.2017

Appellant in person and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Appellant submitted rejoinder which is placed on file. To come up for arguments on 16.06.2017 before D.B.


  
(AHMAD HASSAN)  
MEMBER

  
(ASHFAQUE TAJ)  
MEMBER

16.06.2017

Counsel for the appellant and Mr. Ziaulah, Deputy District Attorney for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 07.08.2017 before D.B.

  
(Gul Zeb Khan)  
Member

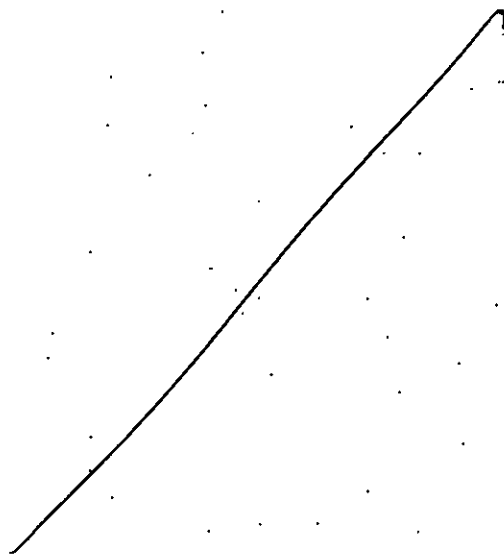
  
(Muhammad Amin Khan Kundi)  
Member

07.08.2017

Counsel for the appellant present. Mr. Yar Gul, Senior Clerk alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents present. Seeks adjournment. Adjourned. To come up for arguments on tomorrow i.e 08.08.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member (J)

  
(Muhammad Hamid Mughal)  
Member (J)



05.10.2016

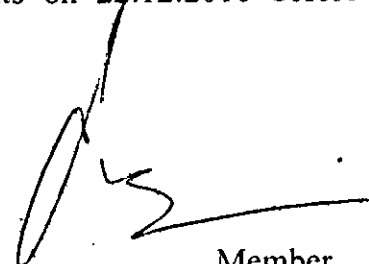
None present for the appellant. Addl. AG for the respondents present. Notices be issued to both the parties for written reply/comments on 8.11.2016 before S.B.



(Muhammad Aamir Nazir)  
(Member)

08.11.2016

Appellant in person and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 22.12.2016 before S.B.



Member

22.12.2016

Counsel for the appellant and Mr. Asif Khan, Naib Qasid alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 13.02.2017.



(MUHAMMAD AAMIR NAZIR)  
MEMBER

26.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Senior Medical Officer (BPS-18). That vide order dated 02.06.2015, the appellant has not been considered for promotion to the post of Principal Medical Officer BPS-19 on the basis of the said minor penalty which is already subjudice before this Tribunal where-against the appellant submitted departmental appeal which was rejected on 03.12.2015 communicated to the appellant on 17.12.2015 and hence the instant service appeal on 15.1.2016.

That the impugned orders are liable to be set aside as factually and legally incorrect.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 19.05.2016 before S.B.

  
Chairman

5.2016

Clerk of counsel for the appellant and Addl: AG for respondents present. Written reply by respondents not submitted. Learned Addl: AG requested for further time for submission of written reply. To come up for written reply/comments on 5-10-16 before S.B.





  
Member



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 270/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.03.2016	<p>The appeal of Dr. Muhammad Nazir resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	22.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29.3.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	29.03.2016	<p>None present for appellent. The appeal be relisted for preliminary hearing before S.B for 12.4.2016.</p> <p style="text-align: right;"> Chairman</p>
	2.04.2016	<p>Agent of counsel for the appellent present. Seeks adjournment. Adjourned for preliminary hearing to 26.04.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Dr. Muhammad Nazir SMO posted at Agency Headquarters Hospital Landi Kotal received to-day i.e. on 15.01.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Affidavit may be got attested by the Oath Commissioner.
- 4- Departmental appeal having no date be dated.
- 5- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 94 /S.T,

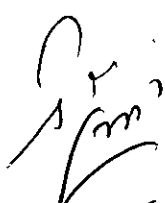
Dt. 18/1 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Ijaz Anwar Ad. Pesh.

- 1) Memorandum of appeal signed by the appellant
- 2) Annexures attested by the Counsel
- 3) Affidavit attested by the Oath Commissioner
- 4) DA the dated/original copy departmental appeal is in custody of the respondents/ appellate authority, from the appellant was not retained the dated copy of appeal.
- 5) Six spare copies of appeal are attached, the objection removed accordingly.

re-submitted after completion

  
SAJID ANWAR  
Advocate

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

Appeal No. 270/2016

Dr. Muhammad Nazir, Senior Medical Officer BPS-18,  
Presently posted at Agency Headquarters Hospital Landi  
Kotal.

(Appellant)

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

**INDEX**

S. NO	Description of documents	Annexure	Page No
1	Memo of Appeal		1-5
2	Affidavit		6
3	Copy of the letter dated 15.07.2014 along with minutes of meeting of the PSB dated 30.06.2014	A & B	7-9
	Copies of the Charge sheet, reply to the charge sheet, inquiry report, show cause notice and penalty order dated 02.06.2015.	C, D, E, F & G,	10-18
8	Impugned letter dated 02.06.2015	H	19
9	Copies of the Review Petition and Rejection Order dated 03.12.2015	I & J	20-22
10	Vakalatnama		23

*Muhammad Nazir*  
Appellant

Through

*Ijaz Anwar*  
IJAZ ANWAR  
Advocate Peshawar

*Sajid Amin*  
SAJID AMIN  
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 270/2016

K.P. Province  
Service Tribunal  
Diary No. 43  
Date 15-01-2016

Dr. Muhammad Nazir, Senior Medical Officer BPS-18,  
Presently posted at Agency Headquarters Hospital Landi  
Kotal.

(Appellant)

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar.
- ✓ 2. Secretary to the Govt. of Khyber Pakhtunkhwa, Health  
Department Peshawar.
3. Director General Health Khyber Pakhtunkhwa Peshawar.
4. Director Health Services, FATA Secretariat, Peshawar.

(Respondents)

**Appeal under Section 4 of the Khyber  
Pakhtunkhwa Service Tribunal Act, 1974,  
against the Order No. SOH(E-V)1-496/ dated  
02.06.2015, whereby the promotion of the  
appellant from the post of Senior Medical  
Officer BPS-18 to Principal Medical Officer  
BPS-19, has been withdrawn, against which the  
review petition of the appellant has also been  
rejected vide order dated 03.12.2015,  
communicated to the appellant on 17/12/2015.**

Prayer in Appeal: -

On acceptance of this appeal the impugned  
orders dated 02.06.2015, and 03.12.2015 may  
please be set-aside, the appellant having been  
duly recommended for promotion by the  
Provincial Selection Board, the respondents are  
therefore be directed to restore the promotion  
of the appellant to the post of Principal Medical  
Officer BPS-19 with all back / consequential  
benefits of service.

no-submitted to-429  
and filed

Registrar

27/3/16

Respectfully Submitted:

1. That the Appellant was initially appointed as Medical Officer BPS-17 on 06.12.1987 in the Respondents Department. During the course of his service the appellant also got promotion to the post of Senior Medical Officer BPS-18 and presently serving at Agency Head Quarter Hospital Landi Kotal.
2. That ever since his appointment, the appellant is performing his duties as assigned with great zeal and devotion and without there being any complaint regarding his performance.
3. That the next post in the channel of promotion to the post of Senior Medical Officer BPS-18, is Principal Medical Officer BPS-19.
4. That recently the Respondent department initiated the process of promotion of Senior Medical officers BPS-18 to the Post of Principal Medical Officer BPS-19, to this effect working paper was also prepared duly included the name of the appellant, accordingly the cases were considered by the Provincial Selection Board (hereinafter to be referred as PSB) and the appellant along with others were recommended for promotion to BPS-19 as Principal Medical Officer. *(Copy of the letter dated 15.07.2014 along with minutes of meeting of the PSB dated 30.06.2014 are attached as Annexure A & B)*
5. That while the promotion case of the Appellant was under process, the Respondent No. 2 due to his personal grudges and malafide intentions in order to create huddles in way of promotion of the appellant, fabricated a false and baseless issue regarding the PERs of the appellant. Accordingly the appellant was served with a charge sheet containing certain false and baseless allegations, the appellant duly replied the charge sheet refuting all the allegations contained therein, thereafter after conducting a partial inquiry the appellant was served with show cause notice which was also replied by him. Lastly he was awarded the minor penalty of stoppage of annual increment for three years vide order dated 02.06.2015. **(Copies of the Charge sheet, reply to the charge sheet, inquiry report, show cause notice, reply to the show cause notice and penalty order dated 02.06.2015 are attached as Annexure C, D, E, F & G).**
6. That to the great surprise of the appellant, quite illegally the promotion case of the appellant to the post of Principal Medical officer BPS-19, has also been withdrawn vide letter dated 02.06.2015. *(Copy of the letter dated 02.06.2015, is attached as Annexure H)*

7. That against the orders dated 02.06.2015, the appellant filed his Review Petition to the Competent Authority, however the same was rejected vide the order dated 03.12.2015. Copy of the order was however communicated to the appellant on 17.12.2015. *(Copies of the Review Petition and Rejection Order .dated 03.12.2015 are attached as Annexure I & J)*
8. That the impugned orders are illegal unlawful against law and facts therefore, liable to be set aside inter alia on the following grounds:-

**GROUND OF SERVICE APPEAL:**

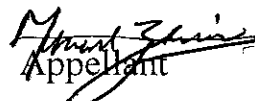
- A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the appellant has not been treated in accordance with law. The P.S.B has not followed the Law and Rules governing promotion, thus the secured and guaranteed rights of the appellant were violated.
- C. That the mandatory provisions of Section 9 of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Khyber Pakhtunkhwa Civil Servant (Appointment, Promotions and Transfer) Rules, 1989 and enabling instructions contained in the ESTA Code have not been adhered to by the respondents thus the appellant has been deprived of his legal and due rights.
- D. That once the appellant has been considered fit and eligible and recommended for promotion by the PSB then the Respondents had left with no authority to withdraw his promotion.
- E. That withdrawal of promotion of the appellant is against the law and violation of the Promotion policy of the Government of Khyber Pakhtunkhwa.
- F. That even otherwise minor penalty cannot be made hurdle in way of promotion of a civil servant, needless to mention that the appellant has already challenged the said penalty order before this Honorable Tribunal in separate appeal.

- G. That the appellant was duly considered and recommended by the Provincial Selection Board, thereafter withdrawing his promotion was unlawful and not warranted under the law and rules.
- H. That it has been consistently held by the superior courts that minor penalty cannot be made huddle in way of promotion, however in case of the appellant he has been denied of his due promotion on account of minor penalty.
- I. That even the order of penalty is illegal and unlawful and is based on malafide intentions just to deprive the appellant from his promotion.
- J. That the Respondent No. 2 has fabricated concocted plot to the victimize the appellant due to his personal grudges with the appellant, because of the fact that the appellant was once nominated as a member of inquiry committee to probe a matter relates to the financial irregularity in the purchase of medicines and other equipments by the population welfare department. In the inquiry report beside others, it was also recommended to initiate the departmental proceedings against the chairman (Respondent No.2) and all other members of the purchase committee. Therefore the respondent became personal to the appellant and the moment the appellant was recommended for promotion, he roped the appellant in the instant matter as a result of which the name of the appellant was dropped from promotion vide the impugned letter dated 02.06.2015.
- K. That if at all the ACR of the appellant was counter signed by an unauthorized officer i.e, the Deputy Secretary instead of the Secretary Social Sector department, even then the appellant cannot be held responsible for such an irregularity as it was the reporting officer who had to submit the ACRs to the countersigning officer, the appellant was having no say in the instant matter. The appellant cannot be made responsible for an act which he has not done.
- L. That under the law, ACRs are confidential documents and the officer reported upon is not supposed to know the contents and otherwise the ACRs duly written and countersigned except the communicated adverse remarks (if any).
- M. That the Respondent No. 2 has maligned the appellant for forgery in his ACRs for the year 2012 and 2013 which is not true. Instead of countersigning officer his deputy secretary has signed the same but the office stamp affixed there under is that of the secretary, social sector department about which the appellant don't know why he countersigned the same himself.


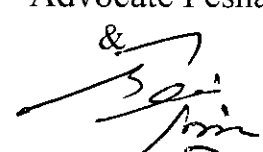
However the appellant cannot be held responsible for irregularity (if any) committed by the department nor his promotion could be withheld for the wrongs not done by him.

- N. That the appellant submitted his ACRs forms for the year 2013 to the Director Health(FATA) being his reporting officer for incorporating his remarks, signatures thereon and onward submission to the countersigning officer and subsequent transmission thereof to the concerned section in D.G. Health services.
- O. That the appellant seeks permission of the Honourable Tribunal to rely on additional grounds at the time of hearing of the instant appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned orders dated 02.06.2015, and 03.12.2015 may please be set-aside, the appellant having been duly recommended for promotion by the Provincial Selection Board, the respondents are therefore be directed to promote the appellant to the post of Principal Medical Officer BPS-19 with all back benefits of service.

  
Appellant

Through

  
**IJAZ ANWAR**  
Advocate Peshawar  
&  
  
**SAJID AMIN**  
Advocate Peshawar



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

Appeal No. \_\_\_\_\_/2016

Dr. Muhammad Nazir, Senior Medical Officer BPS-18,  
Presently posted at Agency Headquarters Hospital Landi  
Kotal.

(Appellant)

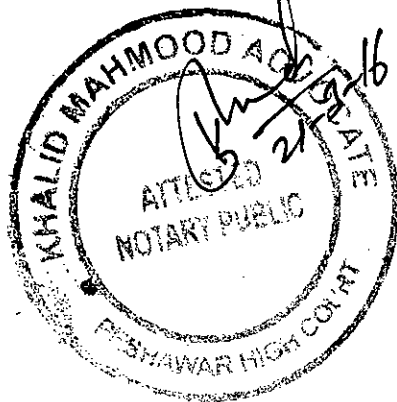
**VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

**AFFIDAVIT**

I, *Dr. Muhammad Nazir, Senior Medical Officer BPS-18, Presently posted at Agency Headquarters Hospital Landi Kotal* do hereby solemnly affirm and declare that the contents of the above accompanied appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



*Muhammad Nazir*  
Deponent

CONFIDENTIAL  
IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-8/2014/P-459  
Dated Peshawar, the 15.07.2014

To

The Secretary to  
Government of Khyber Pakhtunkhwa,  
Health Deptt.


SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD  
HELD ON 30.06.2014.

PROMOTION OF SMO BS-18 TO THE POST OF PRINCIPAL  
MEDICAL OFFICER BS-19

Dear Sir,

I am directed to refer to Health Department letter No. SOH (E-V) 4-22/2014/promotion BS-18 to BS-19 dated 15.05.2014 on the subject and to forward herewith an extract of item No (19) of the minutes/recommendations of the meeting of Provincial Selection Board held on 30.06.2014 for further necessary action / obtaining approval of the competent authority.

Yours faithfully

  
(JAN SAID)  
SECTION OFFICER (PSB)

Encl: As Above  
Endst. of even No. & date.

A copy is forwarded to the Section Officer (E-V), Govt of Khyber Pakhtunkhwa, Health Department. He is requested to depute his representative to collect working papers from this office immediately.

SECTION OFFICER (PSB)



**SUBJECT: PROMOTION OF SENIOR MEDICAL OFFICER BS-18 TO THE POST OF PRINCIPAL MEDICAL OFFICER BS-19 OF GENERAL CADRE**

Secretary Health apprised the Board that due to upgradation and retirement, 235 (two hundred and thirty five) posts of Principal Medical Officer BS-19 are lying vacant. However due to incomplete PERs record the department forwarded the panel of only 208 officers.

2. According to service rules, the post is required to be filled as under:-

By promotion on the basis of seniority cum fitness from amongst the Senior Medical Officers and Blood Bank officers of General Cadre having a minimum of 12 years of service in BS-17 and above and has undergone in service training in type-A hospitals/teaching hospitals for 03 months.

3. The service record of the officers included in the panel was discussed as follows: -

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Dr. Amin Ul Haq	<p>His date of birth is 01.02.1958. He joined government service on 16.04.1986 in BS-17. He was promoted to BS-18 on 03.04.1995. He has undergone three months advance in Service Training mandatory for promotion. According to quantification of PERs, he was on EOL from 01.01.2012 to 28.08.2013. He has earned PER for the period from 29.08.2013 to 31.12.2013 whereas according to promotion policy, his promotion will be considered after he earns one calendar year PER after expiry of leave.</p> <p>The Board recommended to defer his promotion.</p>
2.	Dr. Anwar Zada	<p>His date of birth is 10.10.1961. He joined government service on 16.04.1986 in BS-17. He was promoted to BS-18 on 03.04.1995. The Board in its meeting held on 07.08.2013 recommended to defer his promotion as his PERs for the year 2002, 2003 and 2008 were not available. He has undergone three months advance in Service Training mandatory for promotion. No enquiry is pending against him. His service record upto 2013 is generally good.</p> <p>The Board recommended the officer for promotion to BS-</p>

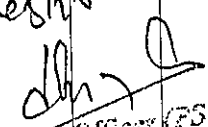
Section Officer (PSE)  
Govt. of Khyber Pakhtunkhwa  
Establishment Department

Attested

8

		<p>No enquiry is pending against him. His service record upto 2013 is generally good.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year</p>
44.	Mr. Muhammad Khalid Khan	<p>His date of birth is 29.01.1961. He joined government service on 06.12.1987 in BS-17. He was promoted to BS-18 on 18.09.1997. He has not undergone three months advance in Service Training mandatory for promotion. His PER for the years 1990, 1991, 1995 to 2004 and 2006 to 2013 are also not available.</p> <p>The Board recommended to defer his promotion.</p>
45.	Dr. Mashal Khan	<p>His date of birth is 22.04.1955. He joined government service on 06.12.1987 in BS-17. He was promoted to BS-18 on 18.09.1997. He has undergone three months advance in Service Training mandatory for promotion. No enquiry is pending against him. His service record upto 2013 is generally good.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation till retirement.</p>
46.	Dr. Muhammad Nazir Khan	<p>His date of birth is 05.01.1958. He joined government service on 06.12.1987 in BS-17. He was promoted to BS-18 on 18.09.1997. He has undergone three months advance in Service Training mandatory for promotion. No enquiry is pending against him. His service record upto 2013 is generally good.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year</p>
47.	Dr. Marifat Shah	<p>His date of birth is 06.04.1958. He joined government service on 06.12.1987 in BS-17. He was promoted to BS-18 on 18.09.1999. He has undergone three months advance in Service Training mandatory for promotion. No enquiry is pending against him. His service record upto 2013 is generally good.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year</p>
48.	Dr. Sher Rehman	<p>His date of birth is 03.06.1958. He joined government service on 06.12.1987 in BS-17. He was promoted to BS-18 on 18.09.1997. He has undergone three months advance in Service Training mandatory for promotion.</p>

CONFIDENTIAL

Attest  
  
 Section Officer (FSU)  
 Govt. of Khyber Pakhtunkhwa  
 Establishment Department

Attest to

(10)

*Handwritten initials and signature*

**CHARGE SHEET**

I, **Pervez Khattak**, Chief Minister Khyber Pakhtunkhwa as competent authority, hereby charge you, **Dr. Muhammad Nazir (BS-18) Deputy Director (Health) FATA Secretariat** as follows:-

"You have tried for promotion from BS-18 to BS-19 on extraneous grounds. The PER for the year 2006 and 2013 submitted to the Provincial Health Department, were fraudulently countersigned from a Junior officer in place of then Secretary Social Sector Department FATA Secretariat.

2. For the above reasons you appear to be guilty of misconduct under Rule-3 (b) of the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

3. You are therefore required to submit your written defense within 7 days of the receipt of this charge sheet to the enquiry officer/committee as the case may be.

4. Your written defense, if any, should reach the enquiry officer/ inquiry committee within the specified period. Failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall follow against you.

5. Intimate as to whether you desire to be heard in person.

6. A statement of allegations is enclosed.

( **PERVEZ KHATTAK** )  
**CHIEF MINISTER**  
**KHYBER PAKHTUNKHWA.**

*Handwritten signature*

To

11

Amir D

**Muhammad Idrees**  
Inquiry Officer,  
Additional Secretary HR,  
Establishment Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject:- **SUBMISSION OF REPORT OF CHARGES LABELED AGAINST  
ACRs AND PROMOTION FROM B-18 TO B-19.**

Dear Sir,

Reference Endorsement of Charge Sheet Director Health (Fata)  
letter No.19511-12 dated: 20.10.2014. Reply is as under-

With due regards it is submitted that:-

1) I had been working as Deputy Director Admin in the Directorate of Health Services (FATA) from 4/4/2013 to 11/8/2014.

2) During my tenure as Deputy Director (Admn), I was appointed as a member of the Enquiry Committee in a case of financial irregularity in the purchase of medicines and equipments by the Population Welfare Department in which the main accused proceeded against was Dr. Lal Zari Deputy Directress (B-18) of that Department (Annex- I).

3) In the enquiry report, keeping in view all the facts and figures of the case the enquiry committee of which I was one of the member, inter-alia recommended as under:-

"Disciplinary proceedings under E&D Rules should be initiated against the Chairman & all the members of the Purchase Committee." (Annex-II)

4) The then secretary Social Sector Deptt; (FATA) now awarded the post of Secretary Health was chairman of the Procurement Committee in the aforesaid case. As per my information through reliable sources, the ACS (FATA) had issued advisory notice to him in the said enquiry proceedings. As such he must have developed some personal grudges with me as member of the enquiry committee.

5) I was due for promotion from B-18 to B-19 having been served in B-18 for the last 17 long years. My case was processed by the Health and Establishment Deptt; and was placed before the PSB in July, 2014 for consideration. The PSB cleared my case for promotion to B-19 and the relevant minutes were furnished to the Health Deptt; for further action in which I was on Serial No. 20. It is worth mentioning that the Secretary Health Aftab Akbar Durrani himself processed my case to PSB in which I was cleared for promotion from BPS-18 to BPS-19.

6) Now, I have come to know that the Secretary Health has fabricated a concocted plot to victimize me and damage my service career due to his personal grudges with me consequent upon my neutral and objective enquiry proceeding in case of Population Welfare Deptt; (FATA) as stated in para-4 above.

7) It has come to know that the Secretary Health Deptt; has maligned me for some sort of forgery in my ACRs for the year 2012 and 2013 in that instead of countersigning officer, his Deputy Secretary has signed the same but the office stamp affixed thereunder is that of Secretary, social sector Deptt; about which I don't know why not he countersigned the same himself. How I can be held responsible for such irregularity (if any) and how my promotion can be with held for the wrongs not done by me. The

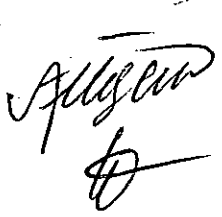
reporting officer was supposed to send the ACRs to the countersigning officer and the countersigning officer after doing the needful had to transmit the same to the ACR record section of the Deptt;

- 8) I submitted my ACRs forms for the years 2013 to the Director Health (FATA) being my reporting officer for incorporating his remarks, signatures thereon and onward submission to the countersigning officer and subsequent transmission thereof to the concerned section in D.G. Health services.
- 9) Under the relevant law on the subject, an officer reported upon has to submit ACR forms to the reporting officer after filling up necessary entries therein pertaining to personal Biodata and since ACRs written by the reporting officer and the countersigning officer are confidential and the officer reported upon is not supposed to know the contents and otherwise of the ACRs duly written and countersigned except the communicated adverse remarks (if any).
- 10) I want to bring in your notice that all my fifteen years ACRs are good/very good.
- 11) Being a member of inquiry committee and personal grudges of Secretary Health it is requested to please nominate someone other competent countersigning officer for my ACRs.

Your's Obediently

Dated:- 5/11/2014

( DR. MUHAMMAD NAZIR )  
MS AHQ HOSPITAL  
KHAR BAJAUR



13

Annex E

## INQUIRY REPORT

**Subject: DISCIPLINARY PROCEEDING AGAINST DR. MUHAMMAD NAZIR**

### INTRODUCTION

The competent authority nominated the undersigned as Inquiry Officer vide Health Department letter No. SOH(E-V)1- 496/2014/Dr. Muhammad Nazir dated Peshawar the 16<sup>th</sup> September, 2014 (**Annex-A**). The allegations leveled against the accused officer have been reproduced below;

*“Dr. Nazir has tried for promotion from BS 18 to BS 19 on extraneous grounds. The PER for the year 2006 and 2013 submitted to the Provincial Health Department, were fraudulently countersigned from a junior officer in place of the then Secretary Social Sector Department FATA Secretariat”*

### PROCEEDINGS

1. The Statement of Allegations received with the Health Department above mentioned letter was served upon the Accused Officer (**Annex-B**). The accused officer was given reasonable time for submission of reply to the allegations. He submitted his reply which is at **Annex-C** of the report.

2. Both the Reporting Officer (RO) and Countersigning Officer (CO) were interviewed regarding the allegations against the accused officer and their statements recorded. Original PERs of the accused officer for 2006 & 2013 were obtained from the Health Department and shown to the RO and CO who confirmed its veracity.

3. Discussions were held with the officials of Health Department regarding the general behavior of the officer. It transpired that the officer is generally good and that no Inquiry has been previously conducted against him.

4. The CO Mr. Fazal Hakim, Deputy Secretary FATA Secretariat during interview with the Inquiry Officer (IO) accepted that he has countersigned the PERs of the accused officer in good faith and on the insistence of the FATA Secretariat officials. His statement is at **Annex-D**.

5. The former Director Health Services FATA, Dr. Fawad who reported upon the accused officer was also interviewed regarding the issue. He informed that as Director Health Services FATA, he supervised huge organizations consisting of about eight thousands officials and that he does not exactly remember whether the laid down procedure as

Allesca



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claimed by the accused officer, was observed in processing the PERs of the accused officer or otherwise. His statement is at **Annex-E**.

6. The accused officer was given the opportunity of personal hearing as per Rule 15 of E&D Rules, 2011. He met the Inquiry Committee on 03.12.2014. The officer denied the allegations leveled against him. He also objected to his PER for the year 2006 saying that Health Department has communicated wrong copy of his PERs for the said period/year.

7. The Health Department was requested to clarify position and provide original/authentic copy of the PERs for the year 2006. The Health Department accordingly provided 3 sets of PERs two sets for 2006 and one set for 2013. The PERs for 2006 are written by different ROs and COs. One set is reported upon by Dr. Fawad while countersigned by Fazal Hakim. While the other set of PERs for the same period is reported upon by Dr. Liaquat, Agency Surgeon Wana and countersigned by Dr. Zubair, DHS FATA.

8. In case the set of PERs (**Annex-Z**) reported upon by Dr. Liaquat, Agency Surgeon Wana and countersigned by Dr. Zubair, DHS FATA is accepted, it will absolve the accused from allegations related to PERs for 2006 as it has been reported upon and countersigned by relevant officers.

9. In order to further clarify the situation, the DG Health KPK was again contacted (**Annex-K**) to clarify the position as to how two different sets of PERs for the same period/year were maintained by the department. The DG Health KPK accordingly replied (**Annex-L**), however, no plausible explanation has been provided.

**REPLY/CONTENTION OF ACCUSED OFFICER**

The accused officer has denied the allegations leveled against him with the below mentioned arguments. Detailed reply to the Statement of Allegations is at **Annex-C**.

1. That proposal for his promotion from BS 18 to BS 19 was submitted to PSB by the administrative department. PSB reportedly cleared him for promotion to BS 19. However, the Administrative Secretary due to his personal grudges with the accused officer fabricated charges against him with a view to spoil his chances of promotion.
2. Animosity of the Administrative Secretary with the accused officer is reportedly due to a previous Inquiry conducted by the accused officer as a member of Inquiry Committee wherein ex-Secretary Social Sector Development FATA had been declared as one of the accused. The accused officer also submitted the previous Inquiry Report which is at **Annex-G**.

C  
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3. That after filling the relevant portions of the PERs, for 2006 & 2013, the accused officer reportedly handed it over to the RO as per the procedure laid down in provision no. 1.0 of Instructions on Performance Evaluation Report 2006. The RO was required to forward the PERs to the CO. The accused officer has claimed that he never signed the PERs from the CO personally.

**FACTUAL POSITION**

Review of relevant documents and discussion with concerned officials of Social Sectors Department, FATA Secretariat, DG Health KPK and particularly RO and CO of the accused officer, the following facts have been deduced.

- a. PERs of Dr. Muhammad Nazir for the year 2006 (**Annex-H**) shows that at that very time he occupied the post of Deputy Director Administration Health (FATA). However, correspondence with the FATA Secretariat officials revealed that Dr. Muhammad Nazir served as a Medical Superintendent (MS) South Waziristan Agency till 15-07-2006. After 15-07-2006, he served as an Agency Surgeon in the same Agency till 3<sup>rd</sup> March, 2010, after which he was transferred to F.R Peshawar as Agency Surgeon. In 2006, the post of Deputy Director Administration Health (FATA) was occupied by Mr. Sartaj Khan and not by Mr. Muhammad Nazir. Similarly Director Health Services FATA was someone else not Dr. Fawad. The accused officer has been reported upon for 2006 by Mr. Fawad as Reporting Officer and Mr. Fazil Hakim as CO who actually were not the Reporting Officer and CO of the accused.
- b. The DG Health later on, shared another set of PERs of the accused officer for 2006 (**Annex-Z**) which has been reported upon and countersigned by actual RO and CO. In case the set of PERs (**Annex-Z**) reported upon by Dr. Liaqat Ali, Agency Surgeon Wana and countersigned by Dr. Zubair DIHS, FATA is accepted, it will absolve the accused from allegations related to PERs for 2006 as it has been reported upon and countersigned by relevant officers. However, the DG Health KPK provided no plausible explanation vide his office letter at **Annex-L**.
  - as to how two sets of PERs of the accused officer for the same period written by different ROs and CO were maintained by the department.
  - if PERs at **Annex-Z** is correct than why wrong copy of the PERs (**Annex-H**) was processed earlier.
- c. PERs of the accused officer for the year 2013 (**Annex-I**) have been correctly initiated by Mr. Fawad, former Director Health Services, FATA being RO of the accused officer. However, his CO was ex-Secretary Social Sectors Department.

2

*Attested*  


FATA Secretariat, but PERs was fraudulently countersigned from a Junior Officer naming Mr. Fazal Hakim, Deputy Secretary in Social Sectors Department, FATA Secretariat.

- d. The accused officer has maintained in his reply that after filling the relevant portions of the ACRs, he submitted it to the RO for further submission to the C.O. However,
  - the accused officer shared no evidence with the IO to prove his claim of submission of his PERs to the RO as per the laid down procedure.
  - the CO vide his statement at Annex-D has maintained that the concerned doctor and staff of FATA Secretariat requested him to countersigned the PERs. The CO statement negates the claim of the accused officer that he submitted his PERs as per the laid down procedure to the RO for further processing.

**FINDINGS**

The Officer has been found guilty of misconduct for fraudulent countersigning of his PERs for 2013 from a Junior Officer. As far as his PERs for 2006 is concerned, the Health Department provided two sets of PERs to the IO. The matter related to the PERs for 2006 needs to be further enquired into at the department level as to how two different sets of PERs for the same period were maintained. Overall findings of the enquiry are given below:

- a) A set of PERs for 2006 at Annex-H were reported upon and countersigned by irrelevant officer. (set of PERs provided by Health Department vide letter dated 19-9-2014).
- b) A set of PERs for 2006 as Annex-Z were reported upon and countersigned by actual RO and CO (set of PERs shared by Health Department later on vide DG Health-Services, KPK letter dated 08-12-2014).  
[Competent authority may accept one of the copies of PERs at Annex-H and Annex-Z].
- c) PERs for 2013 were countersigned by a Junior Officer and not the actual CO.

Findings of the Inquiry given at a, b, and c of the Inquiry Report are submitted to the Competent Authority for final decision in light of Rule 3 (b) of KP E&D Rules, 2011.

*Muhammad Idrees Khan*

(MUHAMMAD IDREES KHAN)  
Additional Secretary (HRD)  
Establishment Department  
(Inquiry Officer)

*Attested*

17

Approved:- F

**SHOW CAUSE NOTICE**

I, **Pervez Khattak** Chief Minister, Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, **Dr. Muhammad Nazir (BS-18)** Deputy Director (Health) FATA as follows:-

- i) Consequent upon completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.
- ii) On going through the findings and recommendations of the enquiry committee, material on record and other connected papers including your defence before the Inquiry officer.

2. I am satisfied that you have committed the act of "Guilty of Misconduct" as specified in terms of Rule-3 (b) of the said rules.

3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the following penalty under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

- i. Censure
- ii. \_\_\_\_\_

4. You are, therefore, required to show cause as to why the aforesaid penalty/penalties should not be imposed upon you.

5. If no reply to this notice is received within seven (07) days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of the findings of the enquiry committee is enclosed.

*Pervez Khattak*  
 (PERVEZ KHATTAK)  
 CHIEF MINISTER  
 KHYBER PAKHTUNKHWA.  
 23.01.2015

Dr. Muhammad Nazir (BS-18)  
Deputy Director (Health)

*Attest*  
*[Signature]*

(18)

AMVED:-G



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

**Dated Peshawar the 2<sup>nd</sup> June, 2015**

**NOTIFICATION**

**NO.SOH(E-V)1-496/2014** WHEREAS Dr Muhammad Nazir (BS-18) Ex-Deputy Director (Health) FATA, was proceeded under Khyber Pakhtunkhwa Govt Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the statement of allegations.

**AND WHEREAS** the Inquiry Committee after having examined the charges, evidence on record and explanation/personal hearing, submitted its report/recommendations.

**AND WHEREAS** Show Cause Notice was served upon him for which he replied.

**AND WHEREAS** an opportunity of personal hearing was afforded to the doctor concerned by the competent authority.

**NOW THEREFORE** in exercise of powers conferred under the aforementioned rules, the Competent Authority is pleased to award the minor penalty of **"Stoppage of three increments for three years"** to Dr. Muhammad Nazir (BS-18) Ex-Deputy Director (Health) FATA.

**SECRETARY HEALTH  
Govt of Khyber Pakhtunkhwa.**

**Endst. No & Date Even.**

Copy to the:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. PSO to Chief Secretary Khyber Pakhtunkhwa
3. Director General Health Services, Peshawar.
4. Director Health Services (FATA), Peshawar.
5. Medical Superintendent Bajaur Agency.
6. Agency Accounts Officer Bajaur Agency.
7. PS to Secretary Establishment Department.
8. PS to Minister for Health Khyber Pakhtunkhwa.
9. PS to Secretary Health Department.
10. PS to Secretary Social Sector Department FATA.
11. Computer Programmer Health Department.
12. Officer/doctor concerned.

*Attested*  
*[Signature]*

**( HINA HAFEEZ )  
SECTION OFFICER(E-V)**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

NO. SOH(E-V)1-496/2007/Dr Muhammad Nazir  
Dated Peshawar the 2<sup>nd</sup> June, 2015

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment Department.


Subject: DISCIPLINARY PROCEEDINGS AGAINST DR.MUHAMMAD NAZIR  
SMO(BS-18)

Dear Sir,

I am directed to refer to your letter No.SO(PSB)ED/1-8/2014/P-459 dated 15.7.2014 and to state that the Provincial Selection Board in its meeting held on 30.6.2014 recommended Dr.Muhammad Nazir from SMO (BS-18) to PMO (BS-19) vide at S.No.46 of the panel. However, his PER for the year 2013 was reported to the Health Department to be disputed and the doctor concerned was proceeded under the Govt of Khyber Pakhtunkhwa Efficiency and Disciplinary Rules 2011. Hence his promotion/recommendations was kept pending.

2. Now the proceedings against the doctor concerned was completed and the competent authority is pleased to withdraw his promotion. It is therefore, requested that the recommendations of the Provincial Selection Board in respect of Dr.Muhammad Nazir SMO (BS-18) may be withdrawn, please.

Yours faithfully,

  
(HINA HAFEEZ)  
SECTION OFFICER(E-V)

Endst No & Date Even.

Copy to the:-

1. PSO to Chief Minister Khyber Pakhtunkhwa.
2. PSO to Chief Secretary Khyber Pakhtunkhwa.
3. Director General Health Khyber Pakhtunkhwa.
4. Director Health Services FATA, Peshawar.
5. PS to Secretary Social Sector Department FATA.
6. PS to Secretary Health Department.
7. PS to Special Secretary Health Department.

  
SECTION OFFICER(E-V)



The Honorable Chief Minister  
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel.

Subject: REVIEW PETITION UNDER RULE-17 OF THE KHYBER  
PAKHTUNKHWA (EFFICIENCY AND DISCIPLINE) RULES 2011  
AGAINST THE HEALTH DEPARTMENT NOTIFICATION DATED  
2.6.2015.

Dear Sir,

FACTS.

1. I DR.Muhammad Nazir BS-18 is working in the Provincial Health Department since 6.12.1987 on regular basis.
2. I have served on various positions in Khyber Pakhtunkhwa and in FATA and I have never issued any charge sheet, Explanation nor I proceeded against disciplinary proceeding.
3. While working as Deputy Director Health FATA I filled and submitted my PER for the year 2013 for promotion to BS-19.
4. My PER for the year 2013 was forwarded to the Director General Health Services Khyber Pakhtunkhwa on the basis of the PER, the Provincial Selection Board in its meeting held on 30.6.2014 recommended me for promotion to BS-19.
5. My promotion to BS-19 was kept pending and I was issued charge sheet on the ground that the PER was countersigned by the Deputy Secretary FATA instead of Secretary FATA.
6. The Provincial Selection Board recommendations were withdrawn and my annual increments were withheld for the year for the reason I have done nothing.


GROUNDS.

- A. The order dated 2.6.2015 is illegal malafide and unlawful.
- B. Show Cause Notice was issued to me wherein the tentative penalty of Censure has been indicated and of which I advanced sound reply. While the penalty is total contrary to the show cause notice and the Provincial Selection Board recommendations was withdrawn and that my annual increments have been withheld for three years which is based on personal grudges.

*Attorney*

ANNEX I

20

 (21)

C. The Provincial Selection Board has been recommended me for promotion to BS-19 and now its pending is not covered under any law/ rules/policy of the Government.

D. I have neither committed any act of misconduct nor I am involved in any embezzlement matter. The formal inquiry officer has also confirmed the fact and recommended only Censure in the inquiry report and the impugned penalty is contrary to the recommendations and against the rules/law.

Prayer.

It is most humbly requested that both the orders dated 02.06.2015 may be set aside. I may kindly be promoted to BS-19 as per recommendations of the Provincial Selection Board and exonerate from the charges with honors.

Yours faithfully

*sd/-*  
( Dr.Muhammad Nazir )  
Health Department

Advance copy of the appeal is submitted to the Secretary Health Department Peshawar.

(Dr.Muhammad Nazir)  
Health Department.

*Attorn*





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

NO. SOH(E-V)1-496/2014/Dr.Muhammad Nazir  
Dated Peshawar the 3<sup>rd</sup> December, 2015

To

Dr.Muhammad Nazir (BS-18)  
Ex-Deputy Director (Health) FATA

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE HEALTH  
DEPARTMENT NOTIFICATION DATED 02.06.2015

I am directed to refer to the subject noted above and to state that your appeal was placed before the competent authority for consideration under Rule-17 of the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011. The competent authority regretted your appeal and kept intact your penalty.

( MUHAMMAD ARSHID )  
SECTION OFFICER-V

Endst No & Date Even.

Copy to the :-

1. Director General Health Services Khyber Pakhtunkhwa.
2. PS to Secretary Health Department.

SECTION OFFICER-V

**POWER OF ATTORNEY**

In the Court of EPK Service Tribunal Peshawar

Dr. Nageer Ahmad

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Govt EPKed Shes

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

and Sajid Amin HCU

my true and lawful attorney, for me in my same and on my behalf to appear at Mejl to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employec any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at 12/21 the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

*Accepted*  
*[Signature]*

*[Signature]*  
**Ijaz Anwar**  
Advocate High Courts & Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

**Appeal No.270/2015**

Dr. Muhammad Nazir.....**Appellant**

Versus

1. Govt of Khyber Pakhtunkhwa through Chief Secretary.
2. Govt of Khyber Pakhtunkhwa through Secretary Health.
3. Director General Health Services Khyber Pakhtunkhwa
4. Director Health Service FATA..... **Respondents**

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO.1 TO 3.**

**Respectfully Sheweth**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has neither cause of action nor locus standi.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to the Tribunal with clean hands.
4. That the appeal is bad due to mis-joinder and non-joinder of necessary party.
5. That the appeal is time barred.

**FACTS.**

1. Correct to the extent that the appellant joined the Health Department on 06.12.1987.
2. Pertains to record.
3. Correct to the extent that the appellant was recommended for promotion by the Provincial Selection Board in its meeting held on 30.6.2014. However, it is pertinent to mention here that the appellant submitted PER for the year 2006 and 2013 which were fraudulently countersigned from a junior officer in place of the then Secretary Social Sectors Department FATA.
4. As explained in para-3 above.
5. As per para-3 above.
6. Correct to the extent that a proper inquiry under the Govt of Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 was conducted against the appellant and the inquiry officer during the course of enquiry found him guilty, upon the enquiry by the competent authority issued the impugned order

7. Correct to the extent that show cause notice was served upon the appellant for which he replied.
8. Needs no comments.
9. Correct to the extent that the appellant submitted departmental appeal to the competent authority which was rejected by the competent authority.
10. Incorrect. The appellant has got no cause of action to file instant appeal.

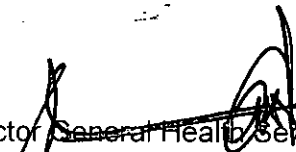
**GROUNDS.**

- A) Incorrect. The appellant has been treated as per law and rules. In term of Rule 2(L)(V) of the Govt Servant (Efficiency and Disciplinary) Rules, 2011 " making approval or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules is an act of misconduct.
- B) Incorrect. The appellant were proceeded under the law and rules.
- C) Incorrect. As explained above.
- D) As explained above
- E) Incorrect. The appellant was fraudulently countersigned his PER for year 2006 and 2013 which is an act of misconduct
- F) As explained in Para-E above.
- G) Correct to the extent that the PER is confidential document.
- H) Incorrect. The proper enquiry was conducted in the issue and the charges leveled against him were proved.
- I) Incorrect as above.
- J) Incorrect as explained in Para-I.
- K) Incorrect, the penalty so imposed is legal
- L) Incorrect as explained in above paras.
- M) Incorrect as replied above.
- N) Incorrect appellant cannot go beyond his pleading.
- O) The respondents also seek permission to raise additional grounds at the time arguments.

It is therefore, prayed that the appeal of the appellant may be dismissed with cost.



Secretary to Govt. of Khyber Pakhtunkhwa  
Health Department  
(Respondent No. 1 and 2)



Director General Health Services  
Khyber Pakhtunkhwa  
(Respondent No. 3)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Dr. Muhammad Nazir.....Vs....Government of KPK

Application for early hearing

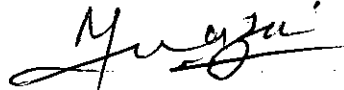
Respectfully Sheweth: -

- 1) That the above service appeal is pending for adjudication before this Tribunal, which is fixed for 16-06-2017 for arguments.
- 2) That initially the Petitioner/Appellant filed the instant appeal on 15-01-2016 and after passing more than one year arguments could not heard by this august Court till today.
- 3) That the Petitioner/Appellant is about to retired in December, 2017 and the Petitioner/Appellant wants disposal of the instant appeal and requests for early hearing before this august Court.
- 4) That a simple question is involved in the appeal of the Appellant, due to which the Petitioner/Appellant suffered a lot.
- 5) Those other colleagues of the Appellant have been promoted to BPS-19, while the Petitioner/Appellant is still stayed in BPS-18, which is against the law of natural justice.
- 6) That both the appeal may kindly be clubbed and be fixed for one day, *date*.

7) That there is no hindrance in the way of early hearing.

It is, therefore, respectfully prayed that on acceptance of this Application, the appeal may kindly be fixed for early hearing to meet.

Applicant (in person)



(DR. MUHAMMAD NAZIR KHAN)

Dated:- 28-03-2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Dr. Muhammad Nazir.....Vs....Government of KPK

Application for early hearing

Respectfully Sheweth: -

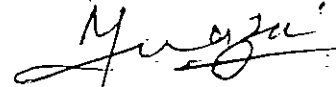
- 1) That the above service appeal is pending for adjudication before this Tribunal, which is fixed for 16-06-2017 for arguments.
- 2) That initially the Petitioner/Appellant filed the instant appeal on 15-01-2016 and after passing more than one year arguments could not heard by this august Court till today.
- 3) That the Petitioner/Appellant is about to retired in December, 2017 and the Petitioner/Appellant wants disposal of the instant appeal and requests for early hearing before this august Court.
- 4) That a simple question is involved in the appeal of the Appellant, due to which the Petitioner/Appellant suffered a lot.
- 5) Those other colleagues of the Appellant have been promoted to BPS-19, while the Petitioner/Appellant is still stayed in BPS-18, which is against the law of natural justice.
- 6) That both the appeal may kindly be clubbed and be fixed for one day, *date*.



7) That there is no hindrance in the way of early hearing.

It is, therefore, respectfully prayed that on acceptance of this Application, the appeal may kindly be fixed for early hearing to meet.

Applicant (in person)



(DR. MUHAMMAD NAZIR KHAN)

Dated:- 28-03-2017

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

In the matter of  
Appeal No.270/2016

Dr. Muhammad Nazir.....(*Appellant*)

***VERSUS***

Government of Khyber Pakhtukhwa through Chief Secretary  
Khyber Pakhtukhwa Peshawar & others. ....(*Respondent*)

**REJOINDER ON BEHALF OF THE APPELLANT**

Respectfully submitted:

**ON PRELIMINARY OBJECTIONS:**

1. Contents incorrect and misleading, he being an aggrieved civil servant has got the necessary cause of action/ locus standi to file the instant appeal.
2. Contents incorrect and misleading, the appeal being filed well in accordance with the prescribed rules and procedure hence maintainable and competent in its form.
3. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.
4. Contents incorrect and misleading all necessary parties are arrayed in the instant appeal.
5. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.

**ON FACTS**

1. No comments to the extent of admission. Moreover the contents of Para-1 of the appeal are also correct.
2. No comments. However the contents of Para-2 of the appeal are correct.

3. No comments to the extent of admission. Rest of the Para is incorrect and misleading. Contents of Para-3 of the appeal are true and correct.
4. No comments. However the contents of Para-4 of the appeal are correct.
5. No comments. However the contents of Para-5 of the appeal are correct.
6. No comments to the extent of admission. Rest of the Para is incorrect and misleading. Contents of Para-6 of the appeal are correct.
7. No comments. However the contents of Para-8 of the appeal are correct.
8. No comments. However the contents of Para-9 of the appeal are correct.
9. No comments.
10. Contents of Para-10 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.

### GROUNDS

The Grounds (A to O) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

*It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for.*

Through

  
Appellant

  
**IJAZ ANWAR**  
Advocate, Peshawar.

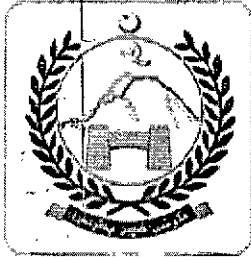
  
**YASIR SALEEM**  
Advocate High Court.



### AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.

  
Deponent



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 1233 /ST Dated: 18/9/2017

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To,

The Secretary Health,  
Government of Khyber Paktunkhwa,  
Peshawar.

Subject: - **JUDGMENT IN APPEAL NO. 270/2016, DR. MUHAMMAD NAZIR.**

I am directed to forward herewith a certified copy of judgment dated 28/08/2017 passed by this tribunal on the above subject for strict compliance.

**Encl: as above**

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR