

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1124/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Jamal Shah (Senior Clinical Technician Pathology), S/o Hamesh Khan,  
R/o Safo Bariband, Mandani, Tehsil Tangi, District Charsadda.

.... (Appellant)

VERSUS

1. Secretary Health Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Director General Health Service, Government of Khyber Pakhtunkhwa, Health Directorate, Peshawar.
3. Medical Superintendent Women and Children Hospital, Rajjar, Charsadda.
4. Nazir Taj, Chief Clinical Technician, R/o Main Laboratory, DHQ, Nowshera

.... (Respondents)

Mr. Javed Iqbal Gulbela  
Advocate

... For appellant

Mr. Noor Muhammad Khattak  
Advocate

... For private respondent

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....30.08.2019  
Date of Hearing.....17.11.2023  
Date of Decision.....17.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“It is therefore, most humbly prayed that on acceptance of the instant appeal, the appellant be declared as entitled for and be extended the post of Technician (BPS-09) w.e.f 1993 i.e. when the appellant completed his



**MLT Diploma with all back benefits in terms of promotion, arrears and seniority.**

**It is further prayed that the impugned office Seniority List 2019 be revised and the appellant be made senior than Respondent No.4 as per law and rules governing the subject with all back benefits.**

**Any other relief, not specifically asked for may also graciously be extended in favor of the appellant in the circumstances of the case."**

2. Brief facts of the case are that appellant was appointed as Lab Assistant (BPS-05) on 16.02.1984. That for the purpose of training/course of F.Sc Medical Laboratory Technology (MLT), he was sent to National Institute of Health, Islamabad (NIH) for two years and after completion of the said course in 1993, he was entitled to Pathology Technician (BPS-09). Similarly, another colleague of the appellant namely Nazir Taj (private respondent No.4) who was appointed on 29.03.1987 against the same post, was also sent for the said training which he completed in the year 1995. At that time, the private respondent No.4 was given promotion to BPS-09 while the appellant was ignored. That later on, the said post's nomenclature was replaced with Junior Clinical Technician and in the year 2012, it was upgraded to BPS-12 with nomenclature of Clinical Technician. That again in the year 2014-15, it was upgraded to Senior Clinical Technician (BPS-14). That despite being senior to the private respondent No.4 who was promoted to the post of Chief Clinical Technician (BPS-16), while the appellant was working against the post of Senior Clinical Technician (BPS-14), he filed departmental appeal, which was not responded to, hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with

connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned seniority list of 2019 is '*quorum non judice*', vide illegal, unwarranted and is liable to be set aside. He contended that the appellant was appointed in 1984 and was sent for MLT Diploma in 1991 and completed the same in 1993 where as respondent No. 4 was appointed in 1987 and have completed his MLT Diploma in 1994 and BPS-09 was given to respondent No. 4 in 1995 while the same was refused to the appellant which is not only illegal, unlawful and unwarranted but highly discriminated.

5. Conversely, learned counsel for private respondent assisted by learned District Attorney contended that the diploma hold from the NIH, Islamabad applied for the post/appointment as Laboratory Technician and appointed by the Departmental Selection Committee, while the appellant did not apply for appointment Laboratory Technician. He further contended that private respondent No.4 was initially appointed as Laboratory Assistant BPS-05 and during service he acquired Diploma in Laboratory Technology from NIH in the year 1993. Furthermore, on the basis of diploma he was appointed as Laboratory Technician BPS-09 vide order dated 01.11.1995 and was further promoted to the post of Clinical Technician BPS-12.

6. Perusal of record reveals that appellant was appointed as Lab Assistant (BPS-05) on 16.02.1984 in the respondent department. Appellant was selected and sent to National Institute of Health Islamabad (NIH) for two years training/course F.Sc Medical Laboratory Technology (MLT) Diploma in the 1991, which was completed in the year 1993. In accordance the rules, appellant was entitled to be appointed to the post of Pathology Technician (BPS-09) which was given to respondent No.4 in 1995 despite the fact that he completed the said



diploma in year 1995 and was initially appointed in BPS-05 on 29.03.1987 later then appellant. Post of the appellant was upgraded in general up gradation to BPS-09 with nomenclature GCT. In year 2012, it was again upgraded with designation of CT (BPS-12) and was once again upgraded to Senior Clinical Technician (BPS-14) in 2014-15 and since then appellant is working in the same rank on the said post, while respondent No.4 is now working as Clinical Technician BPS-16 which is discrimination and against the principles of justice. Appellant filed departmental appeal on 09.05.2019 but same was not responded by the respondent.

7. Main contention of the appellant is that his initial appointment was earlier in time and he completed his MLT diploma earlier then respondent No.4 but he was ignored by the respondent for appointment to the post of Pathology Technician which in fact was promotion and respondent promoted/appointed respondent No.4 to the said post of BPS-09. Official respondent contended that after obtaining diploma of MLT from NIH Islamabad respondent No.4 applied for the post of Laboratory Technician BPS-09 and he was appointed on 01.11.1995 as fresh appointee and was not promoted. Respondent No.4 contended that on the strength of MLT diploma from NIH Islamabad, he was appointed as Laboratory Technician BPS-09.

8. It is pertinent to mention here that respondent No.4 was appointed on strength of diploma of MLT from NIH Islamabad which is pre-requisite for appointment to the post of BPS-09 i.e. Laboratory Technician. Recommendation/Selection of BPS-05 official by the department for diploma of MLT to NIH Islamabad means that after successful completion and return of official concern he will be appointed/promoted to the post of Laboratory Technician BPS-09 otherwise sending by the department will have no logic as during these two year period official had withdrawn their salaries and are on

department roll/strength beside department had bear training course charges at NIH Islamabad. Department itself will have to consider official who had completed successfully MLT diploma for appointment. This get support from the fact that department or respondent No.4 neither annexed any publication in which post of BPS-09 Laboratory Technician was advertised nor any application submitted by the respondent No.4 wherein he had applied for the said post on the basis of which he was appointed.

9. It is also pertinent to mention that appellant completed his MLT diploma in Batch No.28 under roll No. 09 while respondent No.4 in Batch No.29 under roll 43 both in year 1993 but official respondent/department selected respondent No.4 of later batch for appointment by ignoring appellant which is unjustified and discriminatory.


10. So far as question of not applying for the said post by appellant is concerned when there is no advertisement or even any official announcement/notice then how appellant can apply for the same. The most important thing is the department itself sent him for diploma which is prerequisite for appointment to the post of Laboratory Technician and appellant after completion of the course submitted his arrival. Appellant had duly applied for the said post of Laboratory Technician through proper channel on 01.11.1994 to the Administrator Hayat Shaheed Teaching Hospital Peshawar, which was duly forwarded by Chief Laboratory Technician but his request was not considered. Appellant again filed application through proper channel on 01.09.1996 for his appointment as Lab Technician BPS-05 which was forwarded by the Dr. Nizam Uddin, Histopathologist on 01,09.1996 bearing Endst.50/HSTH/LAB and received by Zahoor PA to Administrator of Hayat Shaheed Teaching Hospital Peshawar on 03.09.1996. So on record it is established that appellant applied for the post of Lab Technician BPS-9 but his request was not considered and


respondent No.4 was appointed by ignoring appellant which is against the principal of justice and rules. In our humble view appellant was not treated in accordance with law and rules and he was discriminated by ignoring for appointment against the said post despite having requisite qualification, experience and length of service.

11. Respondents alleged that departmental appeal of the appellant was filed but they failed to produce the said order, even date upon which departmental appeal of the appellant was filed is not mentioned in the reply, which give support to the contention of the appellant that departmental appeal of the appellant was not decided, therefore, it will be in the fitness of things that respondents themselves decide fate of appellant departmental representation with direction to treat the case of the appellant at par with that of respondent No.4.

12. For what has been discussed above, we remand the case back to the respondents for deciding departmental appeal by a speaking order with further direction to treat him at par with respondent No.4 within a period of sixty days of receipt of copy of this judgment. Costs shall follow the event. Consign.


13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
17.11.2023

1. Appellant with his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present. Learned counsel for private respondent present.
2. Vide our detailed judgement of today placed on file, we remand the case back to the respondents for deciding departmental appeal by a speaking order with further direction to treat him at par with respondent No.4 within a period of sixty days of receipt of copy of this judgment. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17<sup>th</sup> day of November, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)