

Cost of Rs. 4000 received in Service Appeal No. 1284/23,

Titled Om Parkash VS. Health

in the office of Superintendent Vide Order 23/11/23

Dated: 15/13/2024.



SUPERINTENDENT

SUPERINTENDENT
Khyber Pakhtunkhwa

Service Tribunal Peshawar
Service Tribunal Peshawar

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

SERVICE APPEAL NO. 1284/2023

Om Parkash.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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15-03-2024

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DEPONENT

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1284 OF 2023

Om Parkash.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth:

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11764

Dated 15-03-2024

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 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. Pertain to record. The appellant transfer from Mobile Hospital Program FATA to Strengthening Program Directorate Health Services FATA is illegal and does not cover under the rules (Annex-A)
2. Pertain to record.
3. Pertain to record. It is further added that the Government opinion was obtained regarding their regularization from the date of appointment vide this Directorate letter No. 3012/Personnel (Promotion) dated 13-11-2020 (Annex-B). The Government of Khyber Pakhtunkhwa Health Department send their advise vide letter No. SO (NMD)/HD/1-50/DHS/FATA dated 27-04-2021 (Annex-C), stating that "Peshawar High Court Peshawar judgment dated 07-12-2018 & 19-12-2018; rendered in Writ Petition No. 926-P/2015 & No. 1378-P/2018

respectively provides only for regularization of the petitioners subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f. first appointment has been issued. Therefore, their very regularization order dated 10/04/2018 requires revision in terms of its issuance with "immediate effect" instead of their "1st appointment". For revision of their regularization order in light of Government letter, this Directorate has already been requested to the Secretary to Govt: of Khyber Pakhtunkhwa, Health Department, Peshawar to revise their regularization order and declare it with "Immediate Effect" instead of "First Appointment". Copy of letter No. 5146/Ministerial Promotion Cell, dated 26-09-2023 is attached as (Annex-D)

4. Pertain to record.
5. The Provincial Seniority List of Office Assistant was issued on 07-12-2022 and the name of the appellant was included from the date of creation of post on regular side vide Government of Khyber Pakhtunkhwa, Finance Department Notification No. SO.F-II/FD/ SNE/ Vol-II/2519 dated 07/02/2018 (Annex-E), in light of Court decision/judgment in Writ Petition No. 926-P/2015 in Writ Petition No.1378-P/2018, which is reproduced below:-

Para-8 In view of observation made hereinabove, petitioner are deemed to be in the services of the said project till its life or in case during this time the project is converted to regular side, all the petitioner would be deemed to be regular employee of Health Services FATA. (Annex-F)

6. Needs no comments being formal.


GROUND:


- A. Incorrect. The employees from S. No. 05 to 64 are Civil Servants and initially appointed as regular employees in Health Department, their seniority are reckoned from the date of initial appointment as mentioned in Section-8, 1, 2, 3 & 4, of Khyber Pakhtunkhwa Civil Servant 1973 and Rule 17 of Khyber Pakhtunkhwa Civil Servant Appointment /Promotion and Transfer Rules 1989, while the appellant was initially appointed on fix pay/contract basis and his name was included in the seniority list from the date of creation of the post from regular side i.e. 07-02-2018. (Annex-i & ii)
- B. Incorrect. As explained in para-03 above.
- C. Incorrect. As explained in para-03 above.
- D. The appellant regularization Notification vide No. E&A/Health/2-5/2019 dated 30/07/2019, as he was appointed on Contract/Fix pay basis in the Project i.e Mobile Hospital Program FATA and irregularly adjusted in another Project i.e. Strengthening Program Directorate Health Services FATA. Full facts of the case have already been explained in Para No. 03 of the Facts.
- E. Incorrect. Respondent No. 3 did not write letter to Respondent No. 2. The letter written by Deputy Director (Admin), Ex-Directorate Health

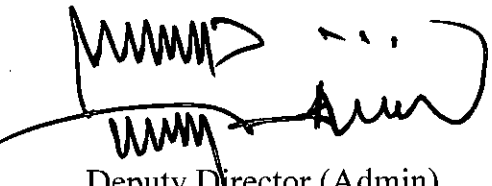
- Services FATA by forwarding the application for inclusion of the name in the Seniority list.
- F. Incorrect. As explained in Para-D above.
- G. For revision of regularization order of the appellant along with others has already been sent to Government of Khyber Pakhtunkhwa Health Department letter No. 5146/Ministerial Promotion Cell dated 26/09/2023.
- H. Incorrect. If the appellant is included in the Provincial Seniority list from the date of fix pay appointment i.e. 03-08-2009, it will adversely affect the Seniority of these incumbents who are in Service since 1984 onwards and this Directorate will face a lot of litigation cases.
- I. Incorrect. As explain Para-.03, 05 & D above.
- J. Answering respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of final hearing.

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)


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


Deputy Director (Admin)
Directorate General Health Services
Khyber Pakhtunkhwa
(Respondent No. 04)

Ameer-A

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FEDERATE HEALTH & POPULATION WELFARE
DEPARTMENT FATA WARSAN ROAD PESHAWAR.

LETTER

In accordance of the Department Selection Committee the competent authority is pleased to appoint Mr. Qam Parkash S/O Bansil Lal Office Assistant on fixed pay as per PC-1 of the Mobile Hospital Programme FATA. The terms & conditions laid down below:

1. That your appointment is on fixed pay extendable to the life of the project.
2. Your services are liable to be terminated at any time with out any notice or any reason being assigned.
3. That you are declared medically fit for Govt. Service.
4. Either party can terminate the contract within 60 days notice a pay in lieu thereof.
5. That you will be posted in Mobile Hospital Programme FATA.
6. That you will not be entitled to any TA/DA and other allowance.
7. If you accept the above terms and conditions, you are directed to report for duty to the undersigned within 15 days after issuance of this order. The offer shall be considered cancelled if you failed to report for duty within the above-mentioned period.

Dr Muhammad Zubair Khan
Director Health Services
FATA
Peshawar.

Dated Peshawar

No. 22862-64/DHS/Admn FATA
12/11/2007.

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Copy for information and necessary action to the -

1. ADPR Sub Office Peshawar
2. Programme Manager Mobile Hospital Programme FATA
3. Dealing Assistant for record.
4. Accountant Local Office Peshawar.
5. Official concerned.

Handwritten signature and stamp of the Deputy Director Administration, FATA Peshawar.

GOVERNMENT OF FATA
PESHAWAR

Annex-A



DIRECTORATE HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD, PESHAWAR

OFFICE ORDER

Mr. Om Parkash Office Assistant attached to Mobile Hospital Programme is hereby posted/adjusted against the vacant post of Office Assistant in ADP Scheme Strengthening Programme Directorate Health Services FATA of the interest of public service.

His service will be upto the life of the project.

Sd/xxxxx
Director Health Services
FATA, Peshawar

No. 13923-27 /DHS/FATA

Dated: 03 / 08 / 2009

Copy forwarded to the:-

1. AGPR, Sub Office, Peshawar
2. Deputy Director (Admin) DHS, FATA, Peshawar
3. Programme Manager Mobile Hospital Programme (FATA)
4. Accountant Local Office
5. Official Concerned

Albert
[Signature]

[Signature]
Director Health Services
FATA, Peshawar

APPEAL NO.

DIRECTORATE HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

Ph: 091-9210212, Fax: 091-9212110

Amer
(B)

(2)

OFFICE ORDER:-

The competent authority is pleased to appoint Mr. Jawad S/O Sher Muhammad (late) Resident of Peshawar is hereby appoint as Assistant in BPS 14 under deceased employed son quota in ADP Program "STRENGTHENING OF HEALTH DIRECTORATE FATA" on the terms and conditions laid down below.

1. His appointment shall be for a period up to the life of the project from the date of his joining in services and shall be extended on yearly basis on his satisfactory performance.
2. He is declared medically fit for the job.
3. His appointment is purely on temporary basis under ADP scheme.
4. It is non-transferable.
5. He shall be entitled for all those allowances admissible under the rules.
6. He shall not include in any trade, business and any other activity what so ever which has been declared prohibited for the Government Servants in Civil Servant Act 1973.
7. He will not entitle for any TA/DA for joining service.
8. If he wishes to resign from the services a prior notice of 60 days will be submitted or pay of 60 days should be deposited in lieu of resignation from the Government Services.
9. The offer shall be automatically held cancelled if he fails to join the duty within 15 days of the receipt of this offer.

J. Hussain
(Signature)

If he accepts the above terms and conditions, he is directed to report for duty to the Directorate Health Services FATA.

Sd/xxxx
Director Health Services
FATA, Peshawar.

Dated 09/06/2016.

No. 8741-45 /DHS/Admin/FATA

Copy forwarded to:-

1. AGPR, Sub Office Peshawar.
2. Deputy Director Admn: DHS FATA.
3. Accountant Local Office.
4. Dealing Assistant for record DHS FATA.
5. Official concerned.

(Signature)
Director Health Services
FATA, Peshawar.

DIRECTOR GENERAL HEALTH SERVICES

KHYBER PAKHTUNKHWA PESHAWAR



E-Mail Address: public@hyko.gov.pk office Ph# 091-9210269 Int. Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. 5012 / Personnel (Promotion) / Date: 13 / 11 / 2020

The Secretary to Govt. of Khyber Pakhtunkhwa
Health Department Peshawar

DETERMINATION OF SENIORITY LIST

Subject:

With reference to your letter No. so (NMD)/HD/1-1/DHS FATA dated 23.09.2020 on the subject noted above, it is stated that the Government had launched a Project by the name of "Strengthening of Health Directorate FATA". Appointments were made against these posts from 2005 to 2016. The employees of the above project approached the Peshawar High Court Peshawar for regularization of their services.

WMP 926-P/2015 decided on 07/11/2016 (Copy attached)

"Petitioners are deemed to be in services of the Project till its life or in case during this time the project is converted to regular side, all the petitioners would be deemed to regular employees of Health Service FATA"

WMP No. 1378-P decided on 19/12/2018 (Copy attached)

"In the light of foregoing observation, this court, by following the ratio of the apex court in the aforesaid case and of the earlier judgment of this court dated 07/11/2016 passed in writ petition No. 926-P/2015, allow the instant petitions bearing No. 2355-P/2018 and N. 2427-P/2018. Consequently, petitioners of this petition and of the connected petitions would be deemed to be regular employees of the Health Services FATA"

In the light of Writ Petition No. 926-p/2015, W.P. No. 1378-P/2016 the

Government regularized the services of the project employees from the date their first appointment vide notification endorsed by the EX.DHS FATA vide No. 8185-92/DHS/admn:/FATA dated 10/04/2018, No 13323-38/DHS/Merged Areas/Admn dated 09/03/2019 DHS FATA and Government Notification No.SOE. IV (E & AD) 1-35/2014 dated 18/7/2019 (Copies attached). This will adversely affect the seniority of those officials who are already in regular service since their appointment and waiting for their promotions since long. It is pointed out that the Govt has created posts for the project employees on regular side with effect from 07/02/2018 as per notification No. SOE. IV/FD/F/NSNE/VOH-2519 dated 07/02/2018 (Copy attached)

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In light of above W.P decision the regularization order of the ex-office Strengthening of Health Services FATA issued by the Government/Ex-DHS FATA, the Government advice is required if their services have been regularized for purpose of pension from the date of their first appointment if so, how the seniority of these officials will be determined as Project period cannot be counted for seniority as per KP Civil Servant Act 1973. Chapter-II, Rule -8 and APT Rules 1989 clearly indicates that "Explanative-III (2) "Seniority in various cadres of civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment"

It is requested to advise this directorate if:-

1. Their seniority may be determined from the date of creation of posts on regular side. I.e with effect from 07/02/2018 OR
2. From the date of decision of the court. OR
3. From the date regularization order issued by the Govt/Ex-DHS FATA.

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ADDITIONAL DG (ADMIN)
DIRECTORATE GENERAL HEALTH SERVICES KPK, PESHAWAR

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11/11/2018

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Annex 'C'

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT PESHAWAR

(5)

(NMD)/HD/1-50/DGHS/FATA

Dated 27.04.2021

Main Diary No. 28/68/16
Directorate General Health Services
Khyber Pakhtunkhwa
Peshawar

The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar

Subject:- DETERMINATION OF SENIORITY LIST

I am directed to refer to your letter No. 3012/Personal(Promotion) dated 11.04.2020 on the above noted subject and to state that Peshawar High Court Peshawar judgments dated 07.12.2016 & 19.12.2018; rendered in writ petition No. 926-P/2015&1378-P/2018 respectively provides only for regularization of the petitioners subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f first appointment has been issued. Therefore, their very regularization order dated 10.04.2018 requires revision in terms of its issuance with "immediate effect" instead of their "first appointment". Therefore, their seniority may be settled in the light of Rules 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

I am therefore, directed to request that both regularization and seniority matters of the petitioners may be settled in the above terms and strictly in accordance with the essence of the afore-said judgments.

Section Officer (NMD)

Endst: No. & date even

Copy forwarded for information to the:

1. PS to Secretary Health, Khyber Pakhtunkhwa Peshawar.
2. PA to Deputy Secretary (Admn), Health Department.
3. Master file.

Section Officer (NMD)

AER Section



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR

E-Mail Address: mgj@pjh.gov.pk office Ph# 091-9210269, 9210196 Fax # 091-9210230

Annex-2

(6)

No. 5146 Ministerial Promotion Cell

Dated 26/09/2023

To

The Secretary to Government Khyber Pakhtunkhwa
Health Department, Peshawar.

Subject: DEPARTMENTAL APPEAL/REQUEST FOR PROMOTION.
R/Sir

Reference your letter No. SOH-VI/HD/Misc/4-4/2022-23/OM Parkash/Asstt:/DGHS dated 11/04/2023 on the subject noted above, parawise reply are as under:-

1. Mr. OM Parkash was appointed as Office Assistant in the Project of ADP Scheme "Strengthening of Health Directorate FATA" on 03-08-2009. (Annex-A)
2. His services were regularized in pursuance of the Judgment of Peshawar High Court, Peshawar in Writ Petition No. 1378-P/2018 by the Government of Khyber Pakhtunkhwa Health Deptt: vide Notification No. E&A/Health/2-5/2019 dated 30-07-2019. (Annex-B)
3. The Government advise was sought vide this Directorate letter No. 3012/Personal (Promotion) dated 13-11-2020, regarding fixation of their seniority is as under: (Annex-C)
 - i. Their seniority may be determined from the date of creation of posts on regular side i.e. with effect from 07/02/2018 OR
 - ii. From the date of decision of the court OR
 - iii. From the date of regularization order issued by the Govt:/Ex-DHS FATA.
4. In response to the above, the Govt: advised that "Peshawar High Court Peshawar judgment dated 07-12-2018 & 19-12-2018; rendered in Writ Petition No. 926-P/2015 & No. 1378-P/2018 respectively provides only for regularization of the petitioners subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f. first appointment has been issued. Therefore, their very regularization order dated 10-04-2018 requires revision in terms of its issuance with "immediate effect" instead of their "first appointment". Therefore their seniority may be settled in the light of Rules 17 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules 1989, vide No. SO (MND)/HD/1050/DGHS/FATA dated 27-04-2021. (Annex-D)

It is therefore requested that the regularization order of the official concerned issued vide Health Deptt: Notification No. E&A/Health/2-5/2019 dated 30-07-2019 may kindly be revised and issued with "immediate effect" as emphasized in Health Deptt: letter vide No. SO (MND)/HC/1050/DGHS/FATA dated 27-04-2021 issued in light of Judgment in writ petition No. 926-P/2015 dated 07-12-2016. (Annex-E)

Admit
[Signature]

just

[Signature]

Director General Health Services
Khyber Pakhtunkhwa, Peshawar

28/9/2023

Section Officer (FAVA-II)
(Sudh Asghar)

- Copy forwarded to the:-
1. Secretary Social Sciences Department, FATVA
 2. Secretary A.I.&C Department, FATVA
 3. Director Health Services (FAVA)
 4. PS to Additional Chief Secretary, FATVA
 5. PS to Secretary Finance, FATVA
- for information.

Section Officer (FAVA-II)
(Sudh Asghar)

Yours faithfully

2. The expenditure involved shall be debitable to the major Head 07-Health, 076-Health Administration, 0761-Administration under DDO Code PR0048 and will be incurred within the sanctioned Budget Grant under Demand No.99-FAVA in the current financial year 2017-18, subject to observance of all codal formalities under intimation to Finance Department FATVA, Secretariat and Additional Accountant General, Pakistan Revenues, Sub Office, Peshawar.

S.No	Designation	BTS	Posts sanctioned
1	Senior Planning Officer	18	1
2	Planning Officer	17	1
3	Monitoring & Comm. Off.	17	7
4	Drug Inspector	17	7
5	Pharmacist	17	3
6	Office Assistant	16	3
7	Computer Operator	16	3
8	Drivers	6	3
9	Mali Qasid	3	1
10	Sweeper	3	1
	Total		34

STRENGTHENING OF HEALTH DIRECTORATE

Subject:- CREATION OF 34 POSTS FOR DIRECTORATE OF HEALTH SERVICES, FATVA
Dear Sir,
I am directed to convey approval / sanction of the competent authority for creation of posts for Directorate of Health Services, FATVA with immediate effect:-

The Additional Accountant General
Pakistan Revenues, Sub Office,
Peshawar

FATA SECRETARIAT
(FINANCE DIVISION)
WARSAK ROAD PESHAWAR
NA.S.O. P. H/DP/FAVA/NO-II 2515
Date: Peshawar, the 27th February, 2017



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JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 926-P/2015

JUDGMENT.

Date of hearing: 7.12.2016

Petitioner: Masud Khan by Muhammad Qasid Swanson Advocate.
Respondent: Man Ahmad Jan by Adv. Masud Khan

WAQAR AHMAD SETHI, J. Through the instant

With Petition, the petitioners have prayed for issuance of an appropriate writ directing the respondents to regularize their service with effect from their appointment by issuing a formal office order with all back benefits.

2. Brief facts of the case are that the petitioners

were appointed as Computer Operators, Drivers and Naib

Qasid respectively on contract basis under the Scheme of

"Strengthening of Health Directorate FATA" after fulfilling

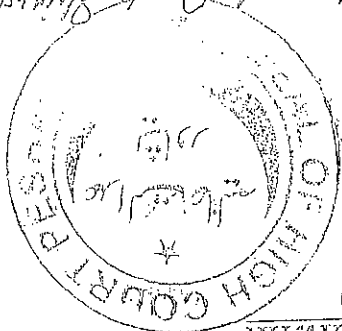
all codal formalities and till date, they are performing their

duties to the entire satisfaction of their superiors. However, the

posts, against which the petitioners were appointed, have been

regularized by the SAFRON Division Islamabad in its meeting

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held on 27.3.2013 and the petitioners time and again

approached the respondents for regularization of their services

but in vain; hence, the instant Writ Petition.

3. Comments were called from respondents No. 3 &

4 which they accordingly furnished and denied the assertion of

petitioners by stating that the notification of SAFRON

Division Islamabad does not cover the case of petitioners.

Moreover, no one has been regularized on the said minutes

because the same is not properly converted into notification

form.

4. Arguments heard and record perused.

5. Admittedly, petitioners were appointed on the

recommendation of Departmental Selection Committee, but on

contract basis under ADP Scheme, "TB Control Program

PATV" on different dates right from 2004 to 2010 and since

their appointment till date they are performing their duties as

such. One of the term and condition of their appointment order

was appointment on contract for a period of three years or till

the life of project which is not disputed by the respondents.

There is nothing on record, adverse to the terms and condition

TESTED
EXAMINER
PROGRAMMER

Alto

Amir

(18)

of service nor respondents have alleged anything against their

performance, efficiency or conduct. In addition to this

respondents have not claimed any retrenchment or any order

in this respect that the department is curtailing the posts.

6. Learned counsel for petitioners has not placed on

record any documents showing that the project against which

petitioners were appointed has been converted to regular side

nor has contended during the arguments, verbally to this

effect. However, he pleaded his case on the analogy of the

case of other project employees of FATA, namely Monitoring

and Evaluation Cell, Social Action Plan FATA, R&D

Department of FATA, wherein petitioners of exactly same

proposition had approached this Court in WP No. 2737-P of

2013 and in view of directives of the Governor's Secretariat

Khyber Pakhtunkhwa, and Federal Cabinet Division Office

memorandum dated 29.8.2008, their services were

regularized. The reported judgment of this court cited by the

petitioner is 2016 PLC-CS-703.

7. We have given our anxious consideration to the

said judgment as well as the facts on record which are slight

NOT TESTED

Attested

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Different because in the earlier judgment of this Court all the

petitioners in that writ petition were appointed, before the

Cabinet Division decision dated 4.6.2008/29.8.2008 and the

posts were of permanent nature, created by the concerned

competent authority, whereas in the instant case there is no

order of conversion of the project to the regular strength. Since

the petitioners of the instant writ petition were appointed till

the life of project therefore, they have the right to continue

against the said project till its existence, until and unless any

misconduct is alleged against them or they are otherwise

declared unfit to hold the particular post. The petitioners have

not even placed on record any document showing that any of

the employee of the particular project in which they are

appointed have been regularized, during this time, by the

department authorities themselves or through court orders, and

as such no case of discrimination is made out.

In view of observation made hereinabove,

petitioners are deemed to be in the services of the said project

until its life or in case during this time the project is converted to

APPOINTED

Attended

THE
SECRETARY
TO THE
GOVERNMENT
OF
INDIA

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RECEIVED BY: [Signature]
DATE: 17-12-16

Attached

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Date of Presentation of Application: 16/12/16

No of Pages: 8

Copying fee: /

Urgent Fee: /

Total: 6

Date of Preparation: 17-12-16

Date Given for Filing: 17-12-16

Date of Receipt: 17-12-16

Received By: [Signature]

[Signature]

47 DEC 2016

CERTIFIED TO BE TRUE COPY

[Signature]

Navab Shah

Sd/ Muzaffar Ahmad Sekh - JUDGE

Sd/ Muhammad Shab Khan Khan - JUDGE

ANNOUNCED
Dated: 6.12.2016

9. With petition is allowed in above terms.

employee of Health Services RATA.

regular side, all the petitioners would be deemed to be regular.

(12)

174

CONSTITUTIONAL PROVISIONS REGARDING
TERMS AND CONDITIONS OF SERVICE OF
CIVIL SERVANTS.

Appointments to service of Pakistan
and conditions of service.

Article 240 of the Constitution of Islamic Republic of
Pakistan, 1973. Subject to the Constitution, the appointment,
and the conditions of service of persons in the service of
Pakistan shall be determined:-

(a) in the case of the services of the federation, posts in
connection with the affairs of the Federation and All-
Pakistan Services, by or under Act of Majlis-e-Shoora
(Parliament); and

(b) in the case of the services of a Province and posts in
connection with the affairs of a Province by or under
Act of the Provincial Assembly;

Explanation: In this Article, "All-Pakistan service" means a
service common to the Federation and the Provinces, which
was in existence immediately before the commencing day on
which may be created by Act of Majlis-e-Shoora (Parliament)

existing rules etc. to continue.

Article 241. Until the appropriate Legislature makes a law under Article 240,
all rules and orders in force immediately before the commencing day shall, so
far as consistent with the provisions of the Constitution, continue in force and
may be amended from time to time by the Federal Government or as the case
may be, the Provincial Government.

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(14)

THE NWFP CIVIL SERVANTS ACT, 1973
(N.W.F.P. Act No. XVIII of 1973)

An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province.

Preamble- *WHEREAS* it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement:- (1) This Act may be called the North West Frontier Province Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

3) It shall come into force at once.

CHAPTER-I

PRELIMINARY

2. Definitions:- (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
 - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
 - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
 - (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the North-West Frontier Province.

Published in the NWFP Government Gazette Extraordinary dated 12-11-1973 at pages 287 N-287V

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Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or [cadre] whether serving the same department or office or not, as may be prescribed.

Seniority: (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post, whichever is later.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing therefrom.

(3) There shall be no confirmation against any temporary post.

(2) A civil servant promoted to a post [] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

Confirmation: -
Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

- (a) If he was appointed to such service or post by initial recruitment, be discharged; or
- (b) If he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and, against which he holds a lien or, if there be no such service or post, be discharged;

Before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

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(2) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(3) Seniority in a post, service or cadre to which a civil servant is promoted shall be effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in official Gazette at least once in a calendar year, preferably in the month of January.

Promotion:-(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a [higher] post for the time being reserved under the rule for departmental promotion in [] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

Posting and Transfer:- Every civil servant shall be liable to serve anywhere within the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited locally to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than to which he would have been entitled if he had not been so required to serve.

Termination of service:- (1) The service of a civil servant may be terminated on notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

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"higher grade" substituted by NWFP Ordinance No. IV of 1985
 section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.
 section 5 of Sec-8 added by NWFP Act No. 1 of 1989
 "higher" inserted by NWFP Ordinance No. IV of 1985
 "the higher grade of" omitted by NWFP Ordinance No. IV of 1985

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Statutory provision regarding Appointment.

Section 5 of Civil Servants Act, 1973 - Appointment to a civil service of the Province to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.

PLANNING AND FRONTIER PROVINCE
 CIVIL SERVANTS (APPOINTMENT, PROMOTION AND TRANSFER) REGULATIONS
 (TRANSFERS) RULES, 1999

PART-I
 GENERAL

Short title and commencement: - (1) These rules may be called the "North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1999".
 (2) They shall come into force at once.

Definitions: - (1) In these rules, unless the context otherwise requires:-
 a) "Appointing Authority" in relation to a post, means the persons authorized under the rules to make appointment to that post.
 b) "Basic Pay Scale" means the Basic Pay Scale for the time being in operation in Government, in which a post or a group of posts is placed.
 c) "Commission" means the North West Frontier Province Public Service Commission.
 d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department or office of Government, which do not fall within the purview of the Provincial Selection Board.
 e) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment/appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission.
 f) Provided that more than one such committees may be constituted for civil servants of different scales of pay.
 g) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a Department or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission].
 h) "Post" means a post sanctioned in connection with the affairs of the Province and not allocated to all Pakistan Unified Grades; and
 i) Provincial Selection Board" means the Board constituted by Government for the purpose of selection of civil servants for promotion or transfer to posts in respect of which the Government is required to make selection in accordance with the provisions of clause (d) of sub-rule (1) of rule 2 and in accordance with the provisions of clause (e) of sub-rule (1) of rule 3 of the Civil Servants Act, 1973.

Case (b) submitted by Notification No. SOR-III (S&C) dated 14-01-97.
 Case (c) submitted by Notification No. SOR-III (S&C) dated 14-01-97.
 Case (d) submitted by Notification No. SOR-III (S&C) dated 14-01-97.

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PART-V

PROBATION AND CONFIRMATION

15 Probation. - (1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

(3) On the successful completion of probation period, the appointing authority shall, by specific order, terminate the probation.

Provided that if no specific order is issued on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended under sub-rule (2).

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed.

Confirmation:-After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the North West Frontier Province Civil Servants Act, 1973.

PART-VI

SENIORITY

17 Seniority :- (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post, provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher

Rule-15 substituted vide Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII dated 16.2.2010
Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.
The words inserted by Notification No. SOR-I(S&GAD)4-1/80/IL, dated 04-02-1996.

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post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

(1) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.

18. **General Rules:** - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. **Repeal:-** The North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

Sub-rule (3) of Rule 17 amended vide Notification No. SOR-II(E&AD)-4-1/80/IV, dated 28-5-2002
Sub-rule (1) of Rule 17 amended vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19th November, 2009

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

SERVICE APPEAL NO. 1284/2023

Om Parkash.....Appellant

Versus

Government of Khyber Pakhtunkhwa & others Respondents.

Affidavit

I, Dr. Shaukat Ali Director General Health Services, Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondents 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.


Deponent





**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Muhammad Yousaf Jamal Focal Person Litigation Section Directorate General Health Services Khyber Pakhtunkhwa is hereby authorized to attend/defend the court cases and file Parawise Comments / Reply on behalf of the undersigned before the Honorable Khyber Pakhtunkhwa Service Tribunal and its Camp Courts.

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