

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (E)

*Service Appeal No. 1332/2019*

Date of presentation of Appeal.....02.10.2019  
Date of Hearing.....08.05.2024  
Date of Decision.....08.05.2024

Ibrahim Shah Son Wahid Gul resident of Umerzai Tehsil & District Charssada.....(Appellant)

**VERSUS**

1. Secretary Health, District Courts, Peshawar.
2. DG (Director General) Health District Courts Peshawar.
3. Ministry of Health District Courts, Peshawar.
4. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
5. Accountant General Office Peshawar Cantt.....(Respondents)

HAFIZ ASFANDYAR,  
Advocate

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For appellant.

ASID MASOOD ALI SHAH,  
Deputy District Attorney

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For respondents

**JUDGMENT**

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

*"On acceptance of this service appeal in hand the respondents may kindly be directed to consider/treated the appellant to be retired in BPS-17 and allow all the back benefits and allowances of BPS-17. Any other remedy not specifically mentioned may also be granted in*

*favour of the appellant.”*

02. Brief facts of the case are that the appellant was appointed as Anesthesia Assistant on 02.09.1978 on regular basis; that the appellant was promoted to the post of Anesthesia Technician (BPS-09) on 07.07.1987 and further promoted to the post of Chief Anesthesia Technician (BPS-16) on acting charge basis. The appellant was time and again neglected and deprived from promotion to the next cadre; that vide order dated 20.02.2010 the other colleague of the appellant were regularly promoted to BPS-16 but the appellant was not regularly promoted to (BPS-16). Feeling aggrieved the appellant filed departmental appeal on 19.03.2010. In response to his departmental appeal his name was included in the seniority list of Chief Anesthesia Technician BPS-16 regularly; that vide order dated 21.07.2017 the appellant was not promoted to the post of Technologist while juniors to the appellant namely Sher Dil Khan & Tahir Gul were promoted to the post of Technologist (BPS-17) who were at serial No.56 & 57. The appellant remained in BPS-16 for more than 27 years since 12.05.1991 till his retirement on 11.11.2018. Feeling aggrieved the appellant filed departmental appeal which was not responded. The appellant filed Writ Petition 6730-P/2018 which was withdrawn by the petitioner to approach the proper forum vide order dated 18.09.2019, hence preferred the instant service appeal on 02.10.2019.

03. Notices were issued to the respondents to submit their reply/comments, respondent No. 5 submitted reply/comments while the rest of the respondents failed to submit their reply/comments hence they are

placed ex-parte. We have heard arguments of learned counsel for the appellant, and have gone through the record.

04. Learned counsel for the appellant contended the appellant is not treated equitably which is his vested right protected by the Constitution of Islamic Republic of Pakistan 1973; that the appellant has wrongly been deprived from promotion to BPS-17; that the principle of seniority cum fitness is wrongly been neglected and the appellant is entitled to be retired in BPS-17 instead of BPS-16.

05. Scrutiny of record reveal that the appellant was initially appointed/promoted as Anesthesia Assistant on 02.09.1978. He was appointed as Chief Anesthesia Technician (BS-16) on acting charge basis vide order dated 12.05.1991 and promoted to the same post on regular basis vide order dated 20.02.2010. The appellant made representation dated 19.03.2010 against the promotion order dated 20.02.2010 taking the plea that he was occupying the post of Chief Anesthesia Technician (BS-16) which was permanent in nature and regular promotion, according to his assessment, was due with effect from 06.07.1992. The representation was turned down vide order dated 18.05.2010 and conveyed to the appellant on 28.05.2010. The assertion of the appellant that as he was holding the post of Chief Anesthesia Technician (BS-16) since 12.05.1991 on acting charge basis, therefore, his seniority was required to be placed with the regular holders of the post, is not tenable. The mode, method and conditions of acting charge appointment clearly spelled out in Rule-9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Rule-9 (6) of the rules ibid provides that "Acting charge appointment shall not confer any vested

right for regular promotion to the post held on acting charge basis". Moreover, the appellant made representation to the respondent department on 19.03.2010 which was considered and turned down and rejection of his departmental appeal was conveyed to him on 28.05.2010. Under the appeal rules he was required to file service appeal within a statutory period of one month but the appellant came to the Tribunal on 07.10.2019 which is badly time barred and as such the appeal is not entertainable on this ground alone.

06. Foregoing in view we dismissed the instant appeal. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

ORDER

08.05.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, we dismissed the instant appeal. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)