

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

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

*Service Appeal No.1770/2019*

Date of presentation of Appeal.....03.12.2019

Date of Hearing.....13.06.2024

Date of Decision.....13.06.2024

**Irfan Ali Shah** S/o Abdul Ali Shah R/o Kotka Abdul Qadeer Shah (Bangash Khel) Mandan, Tehsil & District Bannu presently serving as Clinical Technician BPS-12 (Dental) in the office of erstwhile Agency Surgeon Tribal (District North Waziristan) .....(*Appellant*)

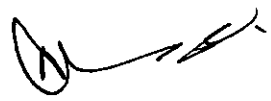
Versus

1. **Secretary Health**, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. **Director General Health** Government of Khyber Pakhtunkhwa, Peshawar.
3. **The Agency Surgeon** Tribal District North Waziristan and 13 other private respondents .....(*Respondents*)

Present:

Mr. Zafar Ali, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents



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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED JOINT SENIORITY LIST OF TECHNOLOGIST (BS-17) IN VARIOUS CADRES IN HEALTH DEPARTMENT KHYBER PAKHTUNKHWA AS STOOD ON 15.04.2019, FINAL SENIORITY LIST OF DEGREE HOLDERS, CLINICAL TECHNICIANS, DENTAL/SENIOR CLINICAL TECHNICIANS/CHIEF CLINICAL TECHNICIANS AS STOOD ON 27.06.2019, PROVISIONAL SENIORITY LIST AND IMPUGNED PROMOTION NOTIFICATION OF RESPONDENT NO.4 DATED 01.02.2018. THE APPELLANT FILED HIS DEPARTMENTAL APPEAL DATED 20.08.2019 TO RESPONDENT NO.1 AGAINST THE SENIORITY LISTS AS PREFERRED TO, IN THE HEADING OF THIS APPEAL BUT THE SAME HAS NOT BEEN RESPONDED DESPITE LAPSE OF**

**STATUTORY PERIOD OF 90 DAYS, HENCE, PRESENTS THIS SERVICE APPEAL BEFORE THIS HONORABLE TRIBUNAL WELL WITHIN 30 DAYS' TIME PERIOD.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case as alleged in the memo and grounds of appeal are that was appointed as Dental Technician (BPS-09), later on the post of Dental Technician was re-designated as Junior Clinical Technologists (JCT) (Dental) BPS-09) on 10.05.2006; that the appellant was promoted to the post of Clinical Technician (Dental) (BPS-12) and was appearing at Serial No.22 in the Provisional Seniority List of Clinical Technician (Dental) BPS-12); that the appellant qualified the degree of B.Sc as well as B.S (Honors) in Dental Technology from Peshawar University; that as per Service Rules of Paramedical Staff (2016), he was allegedly eligible for promotion to the post of Clinical Technologist (BPS-17) but the respondents promoted the private respondent No.4 by superseding the appellant; that the respondent No.4 has been placed at Serial No.93 as Technologist (BPS-17) vide impugned seniority list dated 15.04.2019; that the appellant has been placed at Serial Nno.13 of the final seniority list of Degree holders of paramedics (Dental) 2009, in which he was shown junior to private respondents No.5 to 16; that thereafter, he filed Writ Petition No.337-B/2018 which was disposed of on 06.03.2019; that he filed departmental appeal, which was not responded, hence, this appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. Through the instant appeal, the appellant has made the following prayer:

*"On acceptance of this appeal, the appellant may kindly be declared as senior to private respondents No.4 to 16 and thereby promoted to the post of Technologist (BPS-17) with effect from his passing/acquiring the B.Sc Degree in Dental Technology in terms of the Recruitment Rules dated 10.05.2016 as notified by the Provincial Government with all consequential back benefits."*

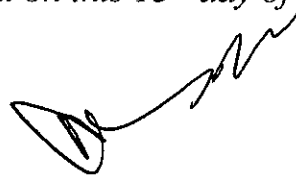
06. The appellant is admittedly in Grade-12, while the seniority list of 15.04.2019, which he has challenged, is of the civil servants who are in grade-17, therefore, he does not have any cause of action or *locus standi* to challenge the list of 15.04.2019 being those of grade-17 officers. As regards promotion notification of 01.02.2018, the appellant claims that he was senior to the private



respondents on the strength of basing his claim on B.Sc Degree. But before taking into consideration such a stance, we asked the learned counsel for appellant to show us the seniority list which was existing before making promotions on 01.02.2018, on which, the learned counsel referred to the provisional seniority list of 2017 which list has not been challenged by the appellant, therefore, he is precluded to challenge the subsequent seniority list, and that too, of the people in Grade-17. His challenging the promotion order dated 01.02.2018 is also ill-founded because he had not challenged that within time.

07. In view of the above situation, instant service appeal is dismissed with costs. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13<sup>th</sup> day of June 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

*\*Mutazem Shah,\**

S.A No.1770/2019

ORDER

12<sup>th</sup> June. 2024

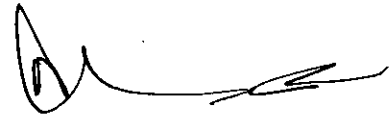
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13<sup>th</sup> day of June, 2024.*



(Muhammad Akbar Khan)  
Member (E)



(Kalim Arshad Khan)  
Chairman