

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No: 301/2019

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

**Mr. Noor Muhammad, Ward Attendant (BPS-1), DHQ Hospital, Taimergara,
District Dir Lower.**

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
4. The District Health Officer, District Dir Lower.
5. The Medical Superintendent DHQ Hospital Timergara, District Dir Lower.

.... (*Respondents*)

Mr. Umar Farooq
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....19.02.2019
Date of Hearing..... 03.06.2024
Date of Decision..... 03.06.2024

CONSOLIDATED JUDGMENT

RashidaBano, Member (J): The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal the respondents may kindly be directed to allow/grant original pay scale of (BPS-2) instead of (BPS-1) to the appellant with effect from the date of appointment i.e. 17.08.2012 with all

consequential back benefits. Any other remedy which this Tribunal deems appropriate that may also be awarded in favour of the appellant.”

2. Through this single order this appeal and all the following connected appeals are being decided together as all are of similar nature. Detail of the connected Appeals, is as under:


1. Service Appeal No.229/2019
2. Service Appeal No.230/2019
3. Service Appeal No.231/2019
4. Service Appeal No.232/2019
5. Service Appeal No.233/2019
6. Service Appeal No.234/2019
7. Service Appeal No.235/2019
8. Service Appeal No.236/2019
9. Service Appeal No.237/2019
10. Service Appeal No.238/2019
11. Service Appeal No.239/2019
12. Service Appeal No.240/2019
13. Service Appeal No.241/2019
14. Service Appeal No.242/2019
15. Service Appeal No.243/2019
16. Service Appeal No.244/2019
17. Service Appeal No.245/2019
18. Service Appeal No.246/2019
19. Service Appeal No.247/2019
20. Service Appeal No.248/2019
21. Service Appeal No.249/2019
22. Service Appeal No.250/2019
23. Service Appeal No.251/2019
24. Service Appeal No.252/2019
25. Service Appeal No.253/2019



26. Service Appeal No.254/2019
27. Service Appeal No.255/2019
28. Service Appeal No.256/2019
29. Service Appeal No.257/2019
30. Service Appeal No.302/2019
31. Service Appeal No.303/2019
32. Service Appeal No.304/2019
33. Service Appeal No.305/2019
34. Service Appeal No.306/2019
35. Service Appeal No.307/2019
36. Service Appeal No.308/2019
37. Service Appeal No.309/2019
38. Service Appeal No.310/2019
39. Service Appeal No.311/2019
40. Service Appeal No.323/2019

3. Brief facts leading to filing of the instant appeals are that respondent department advertised various posts including the post of Ward Attendant (BPS-02) in the year 2008. Appellants having the requisite qualification applied for the post of Ward Attendant and were appointed as Ward Attendant (BPS-02) on different dates (given in the respective appeals) in the Health Department. In their appointment orders scale of the appellants were wrongly mentioned as (BPS-1) instead of (BPS-2). Appellants filed departmental appeals on 29.10.2018, which were not responded, hence the instant service appeals.

4. Respondents were put on notice who submitted written reply/comments on the appeals. We have heard learned counsel for the appellants and Mr. Muhammad Jan, District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.



5. Learned counsel for the appellants argued that the appellants have not been treated in accordance with law/rules and respondents had violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that inaction of the respondents by not allowing original scale i.e (BPS-2) to the appellants is against the law, facts and norms of natural justice. He further argued that inaction of the respondents by not granting original scale to the appellants amounts to the utter disregard of law and rules.

6. Conversely, learned District Attorney contended that the respondents have been treated in accordance with law and rules and no way violating Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that all the appointments for the post of Ward Attendant have been made as according to the sanctioned post of Finance Department NWFP in accordance with law, fact and norms of natural justice.

7. Perusal of record reveals that respondents advertised various posts including the post of Ward Attendant (BPS-2) in the year 2008. The appellants having the requisite qualifications applied for the post of Ward Attendant (BPS-2). Appellants participated in the written test and interview conducted by the respondents. The appellants were declared successful and as such on 27.09.2008 the appellants were recommended by the Departmental Selection Committee for the post of Ward Attendant. In light of the DSC recommendation the appellants were appointed as Ward Attendant on different dates (given in the respective appeals) but in their appointment orders the scales of the appellants have wrongly been mentioned as BPS-1 instead of BPS-2. After appointment the appellants time and again requested the concerned authorities for correction of



their scale but no response were received. It is pertinent to mention here that in advertisement the scale of the appellants have been mentioned as (BPS-2). Moreover, according to the SNE of the Finance Department, the post of the Ward Attendant was mentioned as (BPS-2) instead of (BPS-1). Appellants feeling aggrieved from the inaction of the respondents by not allowing/granting original scale to the appellants filed departmental appeals.

8. Appellants main contentions is that the post of Ward Attendant in the advertisement was mentioned as of (BPS-2), while they were appointed in (BPS-1) which is against the law and rules. Appellants annexed with their appeal two letters of Finance Department dated 1st July 2011, whereby 127 posts were created including the seven posts of Ward Attendants in (BPS-2) in category "D" Hospital Ziarat, Talash District, Dir Lower and letter dated 17.12.2014 whereby eight (8) supernumerary posts of Ward Attendants were created in (BPS-2). Both letters annexed with appeals are issued by the Finance Department after appointment of the appellants, because appellants were appointed on different dates (given in the respective appeals), in pursuance of publication issued in August 2008, post of Ward Attendants were created for Dir Lower and sanction was granted by the Finance Department, Government of N.W.F.P vide letter No. BOVI/FD/4-38/2006-07/VOII dated 26th September 2007, perusal of which reveals that 45 posts of Ward Attendants on fixed pay was created and is mentioned at Serial No.8 of nomenclature of the post and initially post were created in fixed pay which later on converted into (BPS-1).


9. Perusal of budget book for the year 2009 and 2012 reveals that posts of the appellants were reflected in (BPS-1). Appellants at the time of their

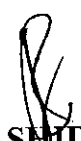
appointments accept (BPS-1) and submitted their arrival in 2009 and 2012 in compliance of their offer of appointment in (BPS-1), now appellants could not challenge it after lapse of about 7 years and after being promoted to (BPS-4). Appellants are estopped by their conduct as they accept the appointment offer in (BPS-1), got and actualized up-gradation and promotion to (BPS-3) and some of them are now in (BPS-4). Later on, appellants service were regularized on the strength of Khyber Pakhtunkhwa Civil Servants (Amendments) Act 2013.

10. Appellants contended that they were recommended by DSC held on 27.09.2008 in BS-2 but perusal of minutes of DSC reveals that there was no mention of selection of the appellants in BS-2 rather it is mentioned that "against the post of Ward Attendant (newly created) at DHQ Hospital Timergara." So, DSC never selected and recommended appellants in (BPS-2) rather recommended them against newly created post of Ward Attendant by Finance Department which was on fixed pay.

11. For what has been discussed above, we are unison to dismiss the instant appeal as well as connected appeals. Costs shall follow the event. Consign.


12. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 3rd day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

ORDER3rd June, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant appeal as well as connected appeals. Costs shall follow the event. Consign.
3. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 3rd day of June, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

*Kaleemullah

04.03.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Safi Ullah, Focal Person for the respondents present.


2. Record in respect of Budget Book for the year 2019 of the appellant is incomplete. Representative of the respondents is directed to produce complete record, including Budget Book of the appellant within a week. This case pertains to Camp Court, Swat, therefore, it be fixed for arguments on 06.05.2024 before D.B at Camp Court, Swat. P.P given to the parties.



(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

06.05.2024 01. Counsel for the appellant. Mr. Muhammad Jan, District Attorney alongwith Dr. Sikandar Bakht, DMS for the respondents present.

02. Representative of the respondents is directed to produce on the next date Budget Books for the years 2008 and 2008 positively. Absolute last chance is given to the parties for arguments, failing which no other opportunity will be granted and the case will be decided without the arguments. To come up for arguments on 03.06.2024 before the D.B at camp court, Swat. PP given to the parties.


(Fareeha Paul)
Member(E)
Camp Court, Swat.


(Rashida Bano)
Member(E)
Camp Court Swat

Fazle Subhan, P.S

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