

(1)

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref: to Objection Petition No. _____/2024
In
COC/E.P No. 647/2023.
In
Service Appeal No. 7616/2021
Date of Hearing/Decision 09-05-2023.

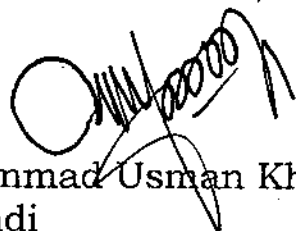
Dr. Bakht Zamin Khan (Rtd)...VS...Health Department.

INDEX

S.#	DESCRIPTION OF DOCUMENTS	ANNEX	P.NO.
1.	Reply to the Objection Petition.		01-04
2.	Affidavit.		04-A
3.	Copy of official letter dated 13-11-2018 for provision of PERs of 01-07-2001 to 2004 & 2017.	"A"	05-08
4.	Copy of official letter dated 27-11-2018 regarding NOC for promotion.	"B"	09-10
5.	Copy of the Comments of respondents in Service Appeal No. 7616/2021.	"C"	11-12
6.	Copy of the Order/Judgment dated 09-05-2023.	"D"	13-17
7.	Copy of the Official Letter dated 25-10-2023 for conditional implementation of the Judgment.	"E"	18

PETITIONER

Through;


Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated; 31/09/2023.

OFFICE: Flat # C-1 Haji Murad Plaza, Opp: Bank of Punjab, Dalazak Road, Peshawar.
Cell# 0333-9153699 * 0300-5895841**

(2)

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15376

In Ref: to Objection Petition No. _____/2024 dated 03.09.24

In

COC/E.P No. 647/2023.

In

Service Appeal No. 7616/2021

Date of Hearing/Decision 09-05-2023.

RESPECTFULLY SHEWETH;

The Appellant/Petitioner/DH humbly submits as under:

PRELIMINARY OBJECTIONS:

- a) That the applicant/objector has got no louse of action to file the instant abjection petition.
- b) That the applicant/objector has no locus standi to file the instant abjection.
- c) That the applicant/objector has not come to this honorable Tribunal with clean hands.
- d) That the question in issue regarding the PER for the year 2018 was once raised by the respondents in their comments to Service Appeal No. 7616/2021 and by then & there, has already been decided by the learned division bench once for all vide order dated 09-05-2023, hence cannot be agitated twice.
- e) That the application/objection petition is also hit by the rule of resjudicata.
- f) That the applicant /objector has nothing in his hand to just his claim.

- g) That the petition in hand is not maintainable in its present form, hence, is liable to be rejected/ dismissed.
- h) That the applicant/ objector has malafidely dragging the petitioner/ decree Holder in the instant false and frivolous litigation, that too without any solid reason.
- i) That the objection petition being devoid of merits and as such is liable to be dismissed with cost.

ON FACTS.

1. Correct.
2. Correct to the extent of filing of Service Appeal No. 7616/2021 whereas the prayers pertains to some other case have wrongly been copy-pasted which has no nexus to the instant case at all.
3. Correct.
4. Incorrect. In order to promote the Senior Medical Officers (BPS-18) to the post of Principal Medical Officers (BPS-19), the Appellant/ Petitioner/DH was asked to provide his PERs for the period of 01-07-2001 to 2004 & 2017 vide official letter dated 13-11-2018 at S. No 326 {Annexure-"A"} and accordingly the needful was done vide official letter dated 27-11-2018 {Annexure-"B"}. Nothing is available on record that the respondent department had ever asked the appellant/DH for provision of ACR/PER for the year 2018. The presumptive and baseless claim regarding the PER for the year 2018 was once raised by the respondents in their comments {Annexure-"C"} to Service Appeal No. 7616/2021 and by then & there, has already been decided by the learned division bench of this august Tribunal once for all vide order dated 09-05-2023, and Para-05 whereof is self-explanatory {Annexure-"D"}. Furthermore, the respondents,

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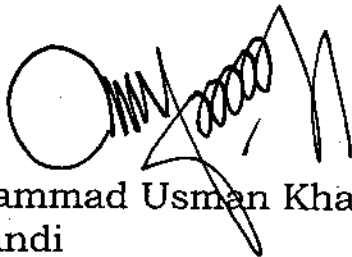
5. once have taken a single step towards the conditional implementation of the judgment {Annexure-"D"} but for the reason best known to them, they retracted from their own stance and filed the instant objection petition. {Copy of the Official Letter dated 25-10-2023 for conditional implementation of the Judgment is annexure- "E"}.
6. Incorrect & denied. Since the replying respondents have deliberately and intentionally have turned up a deaf ear and blind eyes to the plain language of the well-reasoned, well-elaborated, well-sound and constitutionally based on legal footing eliminating discriminative treatment have exposed themselves to the penal sections of Contempt of the Court and as such, they are liable to be asked with iron hands.
7. Except beating of drums no legal grounds are existed to support their baseless, frivolous & unjustified claim.

PRAYERS.

On acceptance of this reply the objection petition filed by the respondents may be dismissed throughout with cost and they further be directed to ensure the early implementation of the order/Judgment dated 09-05-2023 passed in Service Appeal No. 7616/2021 in its litter and spirit please.

PETITIONER/DH

Through


Muhammad Usman Khan
Turlandi
Advocate Supreme Court.

Dated: 31/09/2023.

4-A

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref: to Objection Petition No. _____/2024

In

COC/E.P No. 647/2023.

In

Service Appeal No. 7616/2021

Date of Hearing/Decision 09-05-2023.

Dr. Bakht Zamin Khan (Rtd)....VS...Health Department.

A F F I D A V I T.

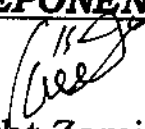
I, Dr. Bakht Zamin Khan (Rtd), Ex-Senior Medical Officer (SMO), previously working and posted as SMO at District Headquarter Hospital Swabi, do hereby solemnly affirm and declare on oath that the contents of the Reply to the Objection Petition on behalf of the DH are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed therein.

IDENTIFIED BY:

DEPONENT

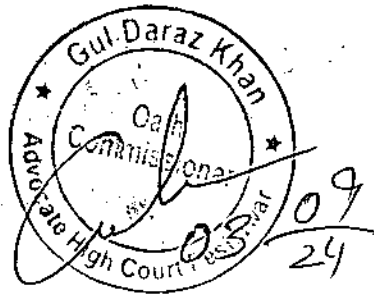


Muhammad Usman Khan
Turlandi
Advocate Peshawar.



Dr. Bakht Zamin Khan (Rtd)

Contact No. 0300-9089727



5



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR**

NO 17506-90/AEL

DATED 13/11/2018

MOST IMMEDIATE

1. Director General Health Services, Punjab Lahore
2. Director Health Services Tribal District Peshawar
3. All Principals Medical Colleges in Khyber Pakhtunkhwa
4. All Hospital Directors MTI in Khyber Pakhtunkhwa
5. All Medical Superintendents, DHQ/AHQ Hospital in Khyber Pakhtunkhwa
6. All District Health Officers in Khyber Pakhtunkhwa

SUBJECT: -

**PROMOTION OF SENIOR MEDICAL OFFICERS (BS-18) TO
THE POST OF PRINCIPAL MEDICAL OFFICERS (BS-19) IN
THE HEALTH DEPARTMENT, K.P.K.**

Memo.

Please furnish the PERs alongwith No Departmental/Anti-Corruption Certificate (two copies) and Fifteen (15) fresh photographs passport size/Course Completion Certificate of the mandatory training required for promotion to BS-19 in respect of the following Senior Medical Officers BPS-18 working under control, to this Directorate within 15 days of the receipt of this communication as the same is urgently required to the Government in connection with their promotion - (This list is also available on line www.healthkp.gov.pk).

S.NO.	NAME OF SENIOR MEDICAL OFFICERS	PLACE OF POSTING	MISSING ACRA REQUIRI
1.	Dr. Tehmina Rasnid d/o Qazi Abdur Rashid, MBBS	Demonstrator, KMC Peshawar	1995 to 2017
2.	Dr. Naila Ismail d/o Muhammad Ismail Banesh,	Demonstrator, KMC, Peshawar/2000	1995 to 2017
3.	Dr. M. Umar Farooq s/o Muhammad Husham, MBBS	SMO, DHQH, Tank	2001 to 2017
4.	Dr. Muhammad Zubeir s/o Haji Ghulam Muhammad,	SMO, CH, Jamrud, Khyber Agy.	2001 to 2017
5.	Dr. Riaz uddin s/o Shahaluddin, MBBS	BKMC, Mardan	2001 to 2017
6.	Dr. Waheed Khan s/o Abdul Hamid Khan, MBBS	KMC, Peshawar	2017
7.	Dr. Ziaur Rashid s/o Sofi Abdur Rashid, MBBS	SMO, DHQH, Abbottabad.	2017
8.	Dr. Jamila Sarwar, MBBS	SWMO, AMC, Abbottabad.	2001 to 2017
9.	Dr. Mushtaq Ahmad s/o Wazir Muhammad, MBBS	Demonstrator, BKMC, Mardan	2008 to 2017
10.	Dr. Nasrat Shah s/o Khan Badshah, MBBS	SMO, THQH, Dogra Picket	2008 to 2017
11.	Dr. Aisha Siddiqi D/O Abdul Qayum, MBBS.	ON DEPUTATION TO PUNJAB.	2000 to 2017
12.	Dr. Mubashir Ahmad s/o Arjunand Khan, MBBS	SMO, Molvi Jee Hospital Peshawar	2009 to 2017
13.	Dr. Saeeda Asad D/O Mohiuddin, MBBS	SWMO, Molvi Jee Hospital, Peshawar	2015 to 2017
14.	Dr. Farmina Qasim D/O Qasim Inam, MBBS	SWMO, KTH, Peshawar.	2009 to 2017
15.	Dr. Beena Gul D/O Gul, MBBS	Demonstrator, KMC, Peshawar	2009 to 2017

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M. USMAN
TURLAND
ADVOCATE PESHAWAR

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**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

No. 17506-90/A.E.I

Dated 13/11/2018

MOST IMMEDIATE

To

1. Director General health Services, Punjab Lahore.
2. Director Health Services Tribal District Peshawar.
3. All Principals Medical Colleges in Khyber Pakhtunkhwa.
4. All hospital Directors MTI in Khyber Pakhtunkhwa.
5. All medical Superintendents, DHQ/AHQ Hospital in Khyber Pakhtunkhwa
6. All District Health Officers in Khyber Pakhtunkhwa.

SUBJECT: - PROMOTION OF SENIOR MEDICAL OFFICERS (BS-18) TO THE POST OF PRINCIPAL MEDICAL OFFICERS (BS-19) IN THE HEALTH DEPARTMENT KPK.

Memo,

Please furnish the PERs alongwith No departmental/Anti-Corruption certificate (Two Copies) and fifteen (15) fresh photographs passport size/course completion certificate of the mandatory training required for promotion to BS-19 in respect of the following Senior medical officers BPS-18 working under control, to this Directorate within 15 days of the receipt of this communication as the same is urgently required to the government in connection with their promotion: (this list is also available on line www.healthkp.gov.pk)

S.NO	NAME OF SENIOR MEDICAL OFFICERS	PLACE OF POSTING	MISSING ACRS REQUIRED
1.	Dr.Tehmina Rashid d/o Qazi Abdur Rashid, MBBS	Demonstrator, KMC, Peshawar	1995 to 2017
2.	Dr.Naila Ismail d/o Muhammad Ismail Bangash,	Demonstrator, KMC, Peshawar 1 / 2000	1995 to 2017
3.	Dr.M.Umar Farooq s/o Muhammad Hashan, MBBS	SMO, DHQH, Peshawar	2001 to 2017
4.	Dr.Muhammad Zubair s/o Haji Ghulam Muhammad	SMO. CH, Jamrud, Khyber Agy.	2001 to 2017
5.	Dr.Rjaz uddin s/o Shahaluddin, MBBS	BKMC, Mairan	2001 to 2017
6.	Dr.Waheed Khan s/o Abdul Hamid Khan, MBBS	KMC, Mardan	2017
7.	Dr.Ziaur Rashid s/o Sofi Abdur Rashid, MBBS	SMO, DHQH, Abbottabad	2017
8.	Dr. Jamila Sarwar, MBBS	SWMO, AMC, Abbottabad	2001 to 2017
9.	Dr.Mushtaq Ahmad s/o Wazir Muhammad, MBBS	Demonstrator, BKMC, Mardan	2008 to 2017
10.	Dr.Nasrat Shah s/o Khan Badshah, MBBS	SMO, THQH, Dogra Picket	2008 to 2017
11.	Dr.Aisha Siddiqi D/ O Abdul Qayum MBBS.	On deputation to Punjab	2000 to 2017
12.	Dr. Mubashir Ahmad s/o Arjumand Khan, MBBS	SMO, Molvi Jee hospital Peshawar	2009 to 2017
13.	Dr.Saeeda Asad D/O K. G. Mohiuddin, MBBS	SMO, Molvi Jee hospital Peshawar	2015 to 2017
14.	Dr.Zarina Qasim D/O Muhi Qasim Imam, MBBS.	SWMO, KTH, Peshawar	2009 to 2017
15.	Dr. Rubeeana Gul D/O Rahim Gul, MBBS	Demonstrator, BKMC, Mardan	2009 to 2017

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Ms. USMAN KHAN
TURLANDI
ADVOCATE PESHAWAR

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307.	Dr. Rab Nawaz Khan Afridi s/o Haji Said Jan	SMO CH Jamrud Khyber Agency	1.7.2001 to 2004 & 2017
308.	Dr. Muhammad Noor S/O H.M. Islam Khan, MD	Attached to DHO, LDir	1.7.2001 to 2004 & 2017
309.	Dr. Syed Mohsin Hussain S/O Syed Mir Abbas	SMO QNBHP Kohat Road Peshawar	1.7.2001 to 2004 & 2017
310.	Dr. Syed Anwar Hussain S/O Noor Syed Mian	At the disposal of DHS FATA	1.7.2001 to 2004 & 2017
311.	Dr. Syeda Shahnaz Jabeen D/O S. Israrullah Shah	DHQ Hospital Chitral.	1.7.2001 to 2004 & 2017
312.	Dr. Sultan un Nisa D/O Hafiz Muhabat Khan	DHQ Hospital Chitral	1.7.2001 to 2004 & 2017
313.	Dr. Nasreen Haider D/O Haider Khan	At the disposal of EDO (H) Swabi	1.7.2001 to 2004 & 2017
314.	Dr. Inayatullah Rehman S/O Mani Khan	SMO, BHU, Mandori Kurram Agency.	1.7.2001 to 2004 & 2017
315.	Dr. Nawab Ali S/O Sher Ali, MBBS	At the disposal of DHS FATA	1.7.2001 to 2004 & 2017
316.	Dr. Sadiqullah Gumrani S/O Samiullah Khan, MD(K)	DHQH, Nowshera.	1.7.2001 to 2004 & 2017
317.	Dr. Inayatullah Jan S/O Muhammad Jan	KTH, Peshawar	1.7.2001 to 2004 & 2017
318.	Dr. Muhammad Ayaz s/o Noor Ahmad Shah, MD	SMO, AHQH, Bajaur.	1.7.2001 to 2004 & 2017
319.	Dr. Darya Khan S/O Maula Khan	SMO, DHQH Abbottabad.	1.7.2001 to 2004 & 2017
320.	Dr. Sajid Khan s/o Ghafoor Khan, MD	At the disposal of EDO(H) Mardan.	1.7.2001 to 2004 & 2017
321.	Dr. Sajjad Khan S/O Sher Mohammad	ESH Pabbi, District Nowshera	1.7.2001 to 2004 & 2017
322.	Dr. Jamshed Qadar S/O Majid Qadar Gul	ESH Pabbi, District Nowshera	1.7.2001 to 2004 & 2017
323.	Dr. Farooq s/o Haji Ashiq Muhammad, MD	SMO, Police & Services Hospital Peshawar	1.7.2001 to 2004 & 2017
324.	Dr. Sardeep Kumar s/o Hukamchand M.D	At the disposal of EDO(H) Buner	1.7.2001 to 2004 & 2017
325.	Dr. Azam Khan Afridi S/O Abdul Aziz, MBBS.	SMO, AHQH, Landikotal.	1.7.2001 to 2004 & 2017
326.	Dr. Muhammad Riaz S/O Ghulam Rasool M.D	SMO, RHC, Manga, Mardan.	1.7.2001 to 2004 & 2017
327.	Dr. Bakht Zamin S/O Wali Dad, MD	At the disposal of EDO (H) Swabi	1.7.2001 to 2004 & 2017
328.	Dr. Ajmal Khan s/o Zulqadar Khan, MD	SMO, PPHI, Swabi.	1.7.2001 to 2004 & 2017
329.	Dr. Inayatullah S/O Karamullah	CH Garhi Habibullah District Mansehra	1.7.2001 to 2004 & 2017
330.	Dr. Muhammad Ayaz S/O Zakirullah, MD	At the disposal of EDO (H) Mansehra	1.7.2001 to 2004 & 2017
331.	Dr. Noor Muhammad s/o Anwar Saeed, MD	SMO, AHQH, Bajaur.	1.7.2001 to 2004 & 2017
332.	Dr. Anwar Rehman S/O Fazal Mohammad,	Govt. LRH Peshawar	1.7.2001 to 2004 & 2017
333.	Dr. Nasreen Begum D/O Muhammad Farid Khan	IKD, Peshawar	1.7.2001 to 2004 & 2017
334.	Dr. Muhammad S/O Muhammad	MO, MC, Mardan.	1.7.2001 to 2004 & 2017
335.	Dr. Muhammad S/O Muhammad (K).	At the disposal of EDO(H) Bannu	1.7.2001 to 2004 & 2017
336.	Dr. Neshat Begum D/O Manzoor Ali, MBBS		

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M. USMAN KH
FURLANDI
ADVOCATE

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306.	Dr. Rab Nawaz Khan Afridi S/o Haji Said Jan	SMO CH Jamrud Khyber Agency	1.7.2001 to 2004 & 2017
307.	Dr. Muhammad Noor S/o H.M Islam Khan MD	Attached to DHO L/Dir	1.7.2001 to 2004 & 2017
308.	Dr. Syed Mohsin Hussain S/o Syed Mir Abbas	SMO GNBHP Kohat Road Peshawar	1.7.2001 to 2004 & 2017
309.	Dr. Syed Anwar Hussain S/o Noor Syed Mian	At the disposal of DHS FATA	1.7.2001 to 2004 & 2017
310.	Dr. Syeda Shahnaz Jabeen D/o S> Israrullah Shah	DHQ Hospital Chitral	1.7.2001 to 2004 & 2017
311.	Dr. Sultan un Nisa D/o Hafiz Muhabat Khan	DHQ Hospital Chitral	1.7.2001 to 2004 & 2017
312.	Dr. Nasreen Haider D/o Haider Khan	At the disposal of EDO (H) Swabi	1.7.2001 to 2004 & 2017
313.	Dr. Inayatpur Rehman S/o Mani Khan	SMO, BHU, Mandori Kurram Agency.	1.7.2001 to 2004 & 2017
314.	Dr. Nawab Ali S/o Sher Ali MBBS	At the disposal of DHS FATA	1.7.2001 to 2004 & 2017
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316.	Dr. Inayatullah Jan S/o Muhammad Jan	KTH, Peshawar	1.7.2001 to 2004 & 2017
317.	Dr. Muhammad Ayaz S/o Noor Ahmad Shah MD	SMO AHQH, Bajour	1.7.2001 to 2004 & 2017
318.	Dr. Darya Kahn S/o Maula Khan	SMO DHQH Abbottabad	1.7.2001 to 2004 & 2017
319.	Dr. Sajid Khan S/o Ghafoor Khan MD	At The Disposal Of EDO (H) Mardan	1.7.2001 to 2004 & 2017
320.	Dr. Sajjad Khan S/o Sher Mohammad	ESH Pabbi District Nowshera	1.7.2001 to 2004 & 2017
321.	Dr. Jamshed Qadar S/o Maj: @ Qadar Gul	ESH Pabbi District Nowshera	1.7.2001 to 2004 & 2017
322.	Dr. Farooq S/o Haji Ashiq Muhammad, MD	SMO, Police & Services Hospital Peshawar	1.7.2001 to 2004 & 2017
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325.	Dr. Muhammad Riaz S/o Ghulam Rasool M.D	SMO, RHC, Manga, Mardan	1.7.2001 to 2004 & 2017
326.	Dr. Bakht Zamin S/o Wali Dad, MD	At The Disposal Of EDO (H) Swabi	1.7.2001 to 2004 & 2017
327.	Dr. Ajmal Khan S/o Zulqadar Khan MD	SMO, PPHI Swabi	1.7.2001 to 2004 & 2017
328.	Dr. Inayatullah S/o Karimullah	CH Garhi Habibullah District Manshera	1.7.2001 to 2004 & 2017
329.	Dr. Muhammad Ayaz S/o Zakirullah MD	At The Disposal Of EDO (H) Mardan	1.7.2001 to 2004 & 2017
330.	Dr. Noor Muhammad S/o Ahmad Saeed MD	SMO, AHQH Bajour	1.7.2001 to 2004 & 2017
331.	Dr. Shamsur Rehman S/o Haji Faqir Muhammad	Govt. LRH Peshawar	1.7.2001 to 2004 & 2017
332.	Dr. Nasreen Begum D/o Ghulam Farid Khan	IKD, Peshawar	1.7.2001 to 2004 & 2017
333.	Dr. Gohar Zaman S/o Minhajuddin MD(K)	MO, MC, Mardan	1.7.2001 to 2004 & 2017
334.	Dr. Noshaba Naheed D/o Manzoor Ahmed MBBS.	At The Disposal Of EDO (H) Bannu	1.7.2001 to 2004 & 2017

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M. USMAN KHAN
TURLAND,
ADVOCATE PESHAWAR

Attested
to
me

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ANNEXURE

Office of The Medical Superintendent, DHO Hospital Swabi

No. 4045/A-7 / DHO Hospital Swabi Dated: 27/11/2018

To: The Directorate General Health Services
Khyber Pakhtunkhwa Peshawar

CL

Subject: ANNUAL CONFIDENTIAL REPORTS

Sir,
Enclosed please find therewith the Annual Confidential Report for the year 2001, 2002, 2003, 2004 & 2017 in respect of Dr. Bakht Zamin SMO BPS-18 for favour or further necessary action please.

There are neither any Criminal/Judicial/Anticorruption cases nor any departmental inquiry against the above Doctor.

Medical Superintendent
DHO Teaching Hospital
Swabi

[Handwritten Signature]

Attested to
[Handwritten Signature]

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M USMAN KHAN
URLANDI
ADVOCATE PESHAWAR

18-A (10)

Office of the Medical Superintendent DHQ Hospital Swabi

No. 4045/A -7 DHQ Hospital Swabi Dated 27-11-2018.

To,

The Directorate General Health Service
Khyber Pakhtunkhwa Peshawar.

Subject: ANNUAL CONFIDENTIAL REPORTS.

Enclosed please find herewith the annual confidential report for the year 2001,2002,2003,2004 & 2017 in respect of Dr. Bakht Zamin SMO BPS-18 for favour of further necessary action please.

There are neither any Criminal/judicial/Anticorruption cases nor any departmental inquiry against the above Doctor.

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TRUE COPY**

**MR. USMAN KHAN
TURLANDI
ADVOCATE PESHAWAR**

Sd/-

Medical Superintendent
DHQ Teaching Hospital
Swabi

Attested

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9/5/2023

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7616 OF 2021

Dr. Bakht Zamin Khan.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 5

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got neither cause of action nor 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 Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Pertains to record.
6. The name of the appellant concerned was included in the list placed before the PSB which was held on 19/04/2019 but the PSB deferred him due to shortage of PER for the year 2018 (Annex-A) and in the same year he reached to the age of superannuation on 07/12/2019.
7. Incorrect. The appellant was duly considered by the PSB, however, due to shortage of PER, he was deferred as per Khyber Pakhtunkhwa Promotion Policy, 2009 hence no right of the appellant has been violated by the answering respondents.

Attested
by
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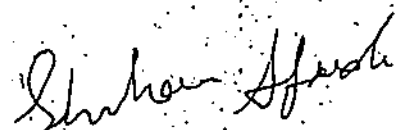
ON GROUNDS:

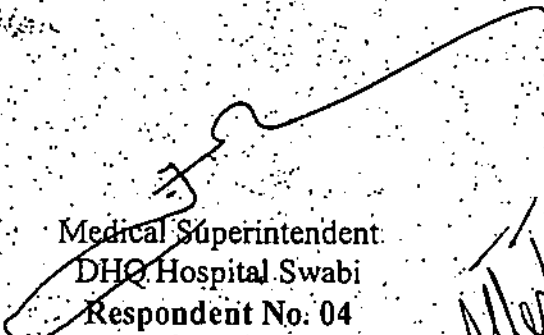
- a) As explained in Para No. 06 of the Facts.
- b) The appellant will fill up first page of ACR / PER by giving him complete data and then will submit to the Department for further needful.
- c) No discrimination has been done by the respondents as explained in Para No. 6 of the Facts.
- d) As explained in Para No. 6 of the Facts.
- e) Pertains to record.
- f) Incorrect. The appellant has been treated in accordance with law.
- g) The appellant was deferred by the PSB due to shortage of PER for the year 2018 which is mandatory documents for analyzing the officer as to whether he is eligible for promotion or otherwise.
- h) As in Para-f.
- i) No discrimination has been done by the respondents.
- j) It is stated that notional promotion granted to Civil Servants who retired after recommendation of the PSB / DPC as per Khyber Pakhtunkhwa Promotion Policy 2009.
- k) As in preceding para.
- l) Incorrect as explain in Para No. 06 of the Facts and Para-J.
- m) As explained above.
- n) As explained above.
- o) Incorrect no violation of constitution has been committed by the answering respondents.
- p) Respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of arguments.


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

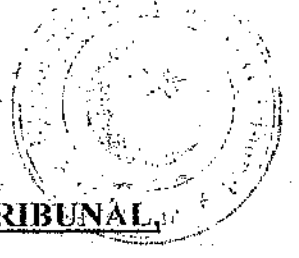

Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 03


Medical Superintendent
DHQ Hospital Swabi
Respondent No. 04


District Health Officer Swabi
Respondent No. 05

Attested to


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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.7616/2021

BEFORE: SALAH-UD-DIN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Dr. Bakht Zamin Khan (Rtd), Ex-Senior Medical Officer (SMO) BPS-18, previously working and posted as SMO at District Headquarter Hospital Swabi..... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary to the Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
3. The Director General Khyber Pakhtunkhwa, Health Services, Peshawar.
4. The Medical Superintendent District Headquarter Hospital Swabi.
5. The Executive District Officer (Health) Swabi.
6. The Chairman, Provincial Selection Board (PSB) Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat Peshawar..... (*Respondents*)

Present:

USMAN KHAN TURLANDI,
Advocate --- For Appellant.

ASAD ALI KHAN,
Assistant Advocate General --- For respondents

Date of Institution.....20.10.2021
Date of Hearing.....09.05.2023
Date of Decision.....09.05.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- Brief fact of the case are that the appellant was serving as SMO (BS-18) at Swabi. He attained the age of superannuation on 07.12.2019 vide Notification

APPELANT

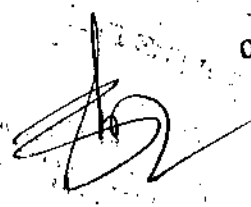
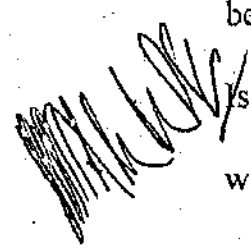
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dated 31.03.2020. That on the recommendation of Provincial Selection Board, the respondent department issued Notification NO.SOI1 (I:-V)4-22/2019 dated 31.05.2019 whereby his juniors colleagues were promoted from BPS-18 to BPS-19. Feeling aggrieved the appellant filed Writ Petition No.3865/2020 before the Hon'ble Peshawar High Court which was disposed of by treating the writ as service appeal before this Tribunal on 29.09.2021.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the act of respondents by not promoting the appellant alongwith his juniors is wrong, illegal, unlawful, unconstitutional and against the fundamental rights as the appellant was asked to provide the ACR/PER for the years 2001 to 2004 and 2017 as per circular instructions circulated by the respondent No. 3 dated 13.11.2018. He submitted that the appellant has been discriminated by violating Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 as he has not been treated at par with his colleagues; that another Notification passed by the respondent No.2 regarding promotion of SMO (Senior Medical Officer) to the post of PMO (Principal Medical Officer) was accorded w.e.f the date of PSB



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but in the case of appellant, the respondents were reluctant to give the appellant equal treatment despite the eligibility and entitlement for the said post of BPS-19 which shows the discriminatory treatment. Lastly, he submitted that the respondents were neglecting and refusing the right of notional promotion to BPS-19 which is against the natural rights as well as fundamental rights. Therefore, he requested for acceptance of the instant service appeal relying on PLD 1957 SC 46, 1991 SCMR 1041, 1993 PLD SC 341, PLD 2001 SC 340, 2002 PLC GS 57, 2004 CLC 1353, 2005 SCMR 2953 and 2011 SCMR 848.

04. Learned Assistant Advocate General controverted the arguments of learned counsel for the appellant and contended that the appellant was responsible for filling up the PERs first and submit to the reporting officer for further proceedings which has not been done. He argued that no discrimination has been done and the Constitution of Islamic Republic of Pakistan, 1973 has not been violated. Lastly, he submitted that at the time of promotion, neither required documents were completed in time, nor PER for the year 2018 were produced by the appellant in time, therefore, he was deferred and was not promoted.

05. Perusal and scrutiny of record available in the case file transpire that the appellant joined government service as Medical Officer (BS-17) on 01.07.2001 and got one step promotion for Senior Medical Officer (BS-18) on 15.11.2017 and remained in BS-18 till his superannuation on 31.03.2020. At the time of processing of promotion case of the appellant and his colleagues to the BS-19 in the year 2018

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appellant stood at serial No. 326 of the seniority list and was eligible for promotion to next higher scale in all respect. His case for promotion alongwith his other colleagues were prepared by the respondent department well before the ACRs for the year 2018 became due. However, the matter remained in the department for five months and by the time the working paper was placed before the PSB on 19.04.2019, the ACR for the year 2018 in respect of the appellant had also become due. In the meeting of PSB dated 19.04.2019 the appellant was deferred for promotion from BS-18 to BS-19 on account of deficiency of ACR for the year 2018. Nothing is available on record that the respondent department had asked the appellant for provision of ACR for the year 2018. There was no fault on part of the appellant for delay of his promotion case. He was eligible for promotion in terms of length of service, completion of service record including ACRs and availability of posts. The delay for placement of the promotion case of the appellant occurred on part of the respondent department. There are numerous judgments of the august Supreme Court of Pakistan as well as of this Tribunal allowing the aggrieved civil servant in such like cases for pro forma promotion on notional basis. Reliance is placed on 2012 SCMR 126, 2021 SCMR 1266 and the judgment of This Tribunal rendered in Service Appeal No.552/2015 titled "Mian Zaman Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others" Service Appeal No. 797/2018 titled "Muhammad Saeed Versus Government of

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Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and 03 others" & Service Appeal No. 625/2018 titled "Anees Ahmed Versus The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others."

06. In view of the forgoing discussion, the instant appeal is allowed and the respondent department is directed to place promotion case of the appellant from BS-18 to BS-19 before PSB for consideration of promotion on notional basis from the date his junior/colleagues were promoted to BS-19 i.e. 31.05.2019. Costs shall follow the event. Consign.

07. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 9th day May, 2023.

(SALAH-UD-DIN)
MEMBER (J)

(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Komranullah
Secretary
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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MOST IMMEDIATE

COURT MATTER

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

NO. SOH(Lit-II)/E.P 647/2023 in S.A: 7616/2021/Bakht Zamin
Dated Pesh: the, 25.10-2023

To

The Section Officer (E-V)
Health Department.

Subject:- **EXECUTION PETITION NO. 647/2023 IN SERVICE APPEAL NO. 7616/2021 TITLED: BAKHT ZAMIN VERSUS GOVT: OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT**

I am directed to refer to the subject noted above and to enclóse herewith copy of Execution Petition No. 647/2023 in Service Appeal No. 7616/2021, titled: Bakht Zamin Versus Govt. of Khyber Pakhtunkhwa Health Department for conditional Implementation, subject to final outcome of the CPLA No. 5981-P/2023 and submission of surty bond to the extent to re-submit all the amount received, if CPLA decided in favour of Govt.

Being court matter, hence may please be treated as **MOST URGENT**.

Encls:As above.


Section Officer (Lit-II)

Endst. No. and date even:

Copy forwarded for information to :-

1. PS to the Secretary Health Department, Khyber Pakhtunkhwa.
2. PA to Deputy Secretary (Litigation) Health Department Peshawar.


Section Officer (Lit-II)