



**ORDER**

30.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the official and learned counsel for private respondents present.
2. Vide our detailed judgment of today placed on file, the instant appeal is disposed of. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of May, 2024.*

  
(FARZEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

time will start from the date of amendment in Rule 10 in shape of insertion/addition of second proviso i.e 10.05.2017 and it was ended on 10.05.2019 while impugned notification was issued on 10.09.2018 which is within two years cushion period.

10. Now, come towards third arguments of learned counsel for the appellant that doctors who entered into General Cadre after creation of Health Service Management Cadre are not entitled for exercise of one time option can exercise one time option. In our humble view after the amendment all those doctors who are continuously /regularly serving at the time of amendment in Rule 10 can exercise one time option. It is important to note that despite absorption of respondent 285 posts in (BSP-18), 73 posts in BPS-19 and 8 posts in BPS-20 are still vacant. Therefore, question of one time option exercise hold the field till the completion of two years cushion period as provided by second proviso of Rule 10.

11. For what has been discussed above, the appeal in hand is disposed of in the above terms. Cost shall follow the event. Consign.

12. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 30<sup>th</sup> day of June, 2024.*

  
(FARIEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

*Rules-10 itself suggested that it was a onetime exercise to fill in the posts in the Management Cadre from amongst the officers of General Cadre. Through such a provision the scope of Rule 10 was enlarged to include the officers who could improve their qualification in order to match the requirements contained in the rules within a period of two years and not otherwise. In such view of the matter, it can safely be held that the respondents who fell into the category of officers having prescribed qualification at the relevant time but failed to opt for their absorption into the management cadre before the coming into force of amended rules on 20.05.2017, were not eligible for the purpose of absorption subsequent to the amendment in the rules”.*

8. In the above judgment amendments in Rule 10 i.e second proviso was discussed and held in accordance with direction of this Tribunal and apex court of The contrary as well as beside holding that only such employees are entitled to be absorbed who did not possess required qualification at the time of creation of this management and not the one who possess the same at the relevant time and did not opt for absorption. This judgment was challenged before the apex court and same was upheld by Supreme Court. So the question having qualification at the time of promotion of rule 10 were not eligible for exercise option in future.

9. So far question of ending of two years time period/cushion period is concerned in this respect it is held that due to litigation and suspension of judgment of this Tribunal in Dr. Sher Muhammad case direction given by this Tribunal was not complied with immediately after decision . Therefore,



*“There seems to be hardly any reason much less justifiable to interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellant the civil appeals No. 320 to 324 of 2012 are therefore dismissed.”*

While CP No. 126-P to 130-P filed by the government was dismissed being time barred. In compliance of the judgment of this Tribunal Rule 10 of the Rules was amended by adding second proviso for providing two year cushion period for induction into Health Service Management Cadre, the same is hereby reproduced for ready reference:

*“Provided further that for a period of two year, form the date of issuance of amending notification of officers of general cadre, who are in regular and continuous service and holding posts as such shall be required to improve their qualification as per the Khyber Pakhtunkhwa Health Management Service Rules, 2008 to exercise the option under this rule”.*

Earlier one Dr. Shams Ur Rehman along with others challenged Notification dated 07.05.2018 whereby 87 doctors of General Cadres were absorbed on the basis of impugned notification dated 10.05.2017 which was decided by this Tribunal vide judgment dated 22.03.2019 wherein it is held that;

*“By virtue of amendment dated 10.05.2017, only the officers of the General Cadre who were in regular and continuous service, were provided opportunity to improve their qualification as required by the Rules of 2008 in order to exercise the option under the rules. By no stretch of imagination, the amendment ever meant to include the officers who were qualified enough for their absorption into the Management cadre after the promulgation of the rules in 2008 but did not opt for the purpose. The language of*

private respondents and learned District Attorney controverted the same by supporting the impugned orders.

6. Perusal of record reveals that appellant became member of health service management cadre upon his appointment on 11.04.2016 in BPS-17. Health service management cadre was created at the strength of the KP Health Management service Rules 2008 which was promulgated on 11.12.2008. Respondent department permanently absorbed /inducted respondent No. 3 to 62 of general cadre into health management cadre upon their option vide notification dated 10.09.2018.

7. When rules of 2008 were promulgated one Doctor SherMuhammad filed service appeal bearing No. 05.03.2010 who agitated the issue of appointment by way of permanent transfer from general cadre to Health Service Management cadre which alongwith other were decided on 03.01.2012 where it is held that two year cushion period to be provided to the doctors of general cadre for acquiring the requisite qualification from the date of decision i.e 03.01.2012 by the government, enabling them to exercise one time option Judgment of this Tribunal dated 03.01.2012 was assailed in Supreme court of Pakistan by filing a civil appeal No. 320-324 of 2012 and No. 126-P to 130-P of 2013. The Supreme Court of Pakistan suspended operation of Judgment of this Tribunal vide its order dated 03.04.2012 it remain suspended till final decision of C.A on 03.11.2016, wherein it is held

that:



**notification dated 10.05.2017 is ultra vires the Constitution of the Islamic Republic of Pakistan, 1973 with particular reference to its Articles 4, 9, 10-A 25 and has also been issued without jurisdiction and is coram non iudice.”**

2. Brief facts leading to filing of the instant appeal are that appellant is a civil servant and member of the Health Services Management Cadre of the Government of Khyber Pakhtunkhwa created under the Khyber Pakhtunkhwa Health Management Service Rules, 2008 brought into effect on 11.12.2008. The appellant aggrieved of the notification issued by the government of Khyber Pakhtunkhwa on 10.09.2018 whereby, respondents No. 3 to 61 have been absorbed in the Management Cadre of the Health Services by way of permanent transfer from General Cadre of the Health Department of the government of Khyber Pakhtunkhwa. Appellant filed departmental appeal against the impugned notification which was filed on 09.10.2018, hence the instant service appeal.

4. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants, learned counsel for private respondents 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. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of appeal while the learned counsel for



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 209/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Dr. Fahad Iqbal S/O Muhammad Iqbal Officer of Health Service Management  
Cadre bps-17 Government of Khyber Pakhtunkhwa Peshawar.

.... (Appellant)

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil  
Secretariat, Peshawar and sixty others.

.... (Respondents)

Mr. Qazi Jawad Ihsan Ullah  
Advocate

... For appellant

Mr. Habib Anwar  
Advocate

.... For private respondents

Mr. Muhammad Jan  
District Attorney

... For respondents

----  
Date of Institution.....08.02.2019  
Date of Hearing..... 30.05.2024  
Date of Decision..... 30.05.2024

**JUDGMENT**

**Rashida Bano, Member (J):** The instant service appeal has been instituted  
under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the  
prayer copied as below:

**“On acceptance of instant appeal this august Tribunal may be  
pleased to set aside the notification dated 10.09.2018 by declaring  
the permanent absorption of respondents No. 3-61 in the  
Management Cadre as illegal and ultra vires and declare that**