

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 177/2024

Ali Raza.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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Deponent



**Director General Health Services
Khyber Pakhtunkhwa, Peshawar**

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 177 OF 2024

Ali Raza.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT # 01 TO 05 & 07

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth:

Diary No. 15818

Dated 18-09-24

Preliminary Objections:-

1. That the appellant has got no cause of action or 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 the appeal in hand 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 instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Pertain to record.
2. Pertain to record.
3. Pertain to record.
4. Pertain to record.
5. Correct to the extent that Regularization order of Respondent No. 8 & 9 was issued on 10/04/2018 and 09/08/2019 respectively w.e.f. their 1st appointment. For determination of their Seniority, Government advice was sought vide this Directorate letter No.3012/Personnel (Promotion) dated 13/11/2020 (Annex-A). The Government has replied that Peshawar High Court Peshawar Judgment dated 07/12/2016 & 19/12/2018, rendered in Writ Petition No. 926-P/2015 and 1378-P/2018 respectively provides only for regularization of the Petitioner subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f 1st appointment has been issued. Therefore, their very regularization order dated 10/04/2018 requires revision in terms of its issuance with "immediate effect" instead of their "First appointment". Therefore their Seniority may be settled in the light of Rules -17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989 (Annex-B).

On the advice of the Government the case has already been sent to the Health Department for Notifying their regularization order with immediate effect vide this Directorate letter No.5146/Ministerial Promotion Cell dated 26/09/2023 which is under process over there (Annex-C).

- 6. Correct to the extent that the Petitioner submitted an appeal dated 14/07/2020 on which advice of the Government was sought as explain in para-5 above.
- 7. Pertain to record.
- 8. Pertain to record.
- 9. Pertain to record.
- 10. The Inquiry Committee in the case was notified on 26/10/2021 which was modified vide this Directorate Office Order dated 08/11/2021(already attached with the appeal as annex-G.
- 11. As in preceding para.
- 12. The Seniority list was prepared in accordance with prevailing rules. The respondent No. 8 & 9 as per their regularization order are senior to the appellant, therefore they were shows Senior in the Seniority list.
- 13. As replied above.
- 14. Incorrect. No assurance was extended to any employee.
- 15. Incorrect. The promotion of Class-IV employees was made in accordance with rules.
- 16. As in preceding para.
- 17. Pertain to record.
- 18. Pertain to record.
- 19. The Promotion order was issued on the recommendation of Department Promotion Committee in accordance with Service Rules.
- 20. Needs no comments being formal.

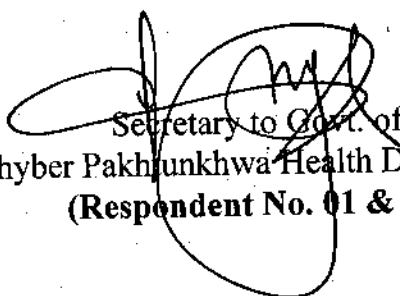
ON GROUNDS


- A. Incorrect. Appellant was treated according to law.
- B. Incorrect. The promotion of Class-IV employees were made on the basis of Seniority list / Service Rules, so question of misuse of position does not arise.
- C. An enquiry committee comprising of senior officer was constituted to re-examine the seniority of Class-IV employees but enquiry report is still awaited.
- D. The regularized employees were included in the seniority list on the basis of their regularization order, so nothing was done wrong.
- E. As in preceding para.
- F. As explain in Para-D above.
- G. As explain in aforesaid paras. The enquiry report is still awaited.
- H. The case has already been taken up with the Government for necessary action in the matter.
- I. As above.
- J. The Promotion order has been issued after the approval of Departmental Promotion Committee accordance with rules.
- K. Incorrect. All the process has been completed in accordance with law and rules.
- L. According to their regularization order they are senior to the appellant, therefore, considered by the Departmental Promotion Committee on the basis of Seniority.

- M. Incorrect. As per his appointment order he is Junior to the respondent No. 8 & 9, thus his stance is not maintainable under the law.
- N. The Departmental Promotion Committee considered the case in light of Service Rules and Seniority list and has been decided accordingly.
- O. As in preceding para.
- P. Incorrect. His name was included in the Seniority list at S. No. 8 while Class-IV employees were promoted up to Serial No. 7 on the availability of seats for promotion.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellatant 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, 04 & 05)

Annex "A"

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DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: hwfndghs@yahoo.com office Ph# 091-9210269 Ext Exchange# 091-9210187, 9210196 Fax # 091-9210230	
No. <u>3012</u> / Personnel (Promotion)	Dated: <u>13</u> / 11 / 2020

To,

The Secretary to Govt. of Khyber Pakhtunkhwa
Health Department Peshawar.

Subject: DETERMINATION OF SENIORITY LIST

With reference to your letter No. so (NMD)/HD/1-1/DHS FATA dated 23.09.2020 on the subject noted above, it is stated that the Government had launched a Project by the name of "Strengthening of Health Directorate FATA". Appointments were made against these posts from 2005 to 2016. The employees of the above project approached the Peshawar High Court Peshawar for regularization of their services.

WP 926-P/2015 decided on 07/12/2016 (Copy attached)

"Petitioners are deemed to be in services of the Project till its life or in case during this time the project is converted to regular side, all the petitioners would be deemed to regular employees of Health Service FATA"

WP No. 1378-P decided on 19/12/2018 (Copy attached)

"In the light of foregoing observation, this court, by following the ratio of the apex court in the aforesaid case and of the earlier judgment of this court dated 07/12/2016 passed in writ petition No. 926-P/2015, allow the instant petitions bearing No. 2355-P/2018 and N. 2427-P/2018. Consequently, petitioners of this petition and of the connected petitions would be deemed to be regular employees of the Health Services FATA."

In the light of Writ Petition No. 926-p/2015, W.P No. 1378-P/2016 the Government regularized the services of the project employees from the date their first appointment vide notification endorsed by the Ex.DHS FATA vide No. 8185-92/DHS/admn:/FATA dated 10/04/2018, No 13323-38/DHS/Merged Areas/Admn: dated 09/08/2019 DHS FATA and Government Notification No.SOE. IV (E & AD) 1-35/2014 dated 18/7/2019(Copies attached). This will adversely affect the seniority of those officials who are already in regular service since their appointment and waiting for their promotions since long. It is pointed out that the Govt has created posts for the project employees on regular side with effect from 07/02/2018 as per notification No. SO.F-II/FD/FA/SNE/Vol-II-2519 dated 07/02/2018 (Copy attached)



In light of above W.P decision the regularization order of the ex-office Strengthening of Health Services FATA issued by the Government/Ex-DHS FATA, the Government advice is required if their services have been regularized for purpose of pension from the date of their first appointment if so, how the seniority of these officials will be determined as Project period cannot be counted for seniority as per KP Civil Servant Act 1973. = Chapter-II, Rule -8 and APT Rules 1989 clearly indicates that "Explanative-III (2) "Seniority in various cadres of civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre ;provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment"

It is requested to advise this directorate if:-

1. Their seniority may be determined from the date of creation of posts on regular side I,e with effect from 07/02/2018 OR
2. From the date of decision of the court. OR
3. From the date regularization order issued by the Govt:/Ex-DHS FATA.

12/11
 ADDITIONAL DG (ADMN)
 DIRECTORATE GENERAL HEALTH
 SERVICES KPK, PESHAWAR
 11/11/2018

Annex "B" 233

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT PESHAWAR

PR 19

ISO(NMD)/HD/1-50/DGHS/FATA

4189 Dated 27.04.2021

Main Diary No. 28/6/4
Directorate General Health Services,
Peshawar
Main Diary No. 28/6/4
Directorate General Health Services,
Peshawar

The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar

Subject:- DETERMINATION OF SENIORITY LIST

I am directed to refer to your letter No. 3012/Personal(Promotion) dated 13.11.2020 on the above noted subject and to state that Peshawar High Court Peshawar judgments dated 07.12.2016 & 19.12.2018; rendered in writ petition No. 926-P/2015&1378-P/2018 respectively provides only for regularization of the petitioners subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f first appointment has been issued. Therefore, their very regularization Order dated 10.04.2018 requires revision in terms of its issuance with "immediate effect" instead of their "first appointment". Therefore, their seniority may be settled in the light of Rules 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

I am therefore, directed to request that both regularization and seniority matters of the petitioners may be settled in the above terms and strictly in accordance with the essence of the afore-said judgments.

Section Officer (NMD)

Endst: No. & date even

Copy forwarded for information to the:

1. PS to Secretary Health, Khyber Pakhtunkhwa Peshawar.
2. PA to Deputy Secretary (Admn), Health Department.
3. Master file.

Section Officer (NMD)

AER Section

Annex "C"



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR

E-Mail Address: nwfdgls@yahoo.com office Ph# 091-9210269, 9210196 Fax # 091-9210230

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(7)

No 5146 /Ministerial Promotion Cell

Dated 26/09/2023

To

The Secretary to Government Khyber Pakhtunkhwa
Health Department, Peshawar.

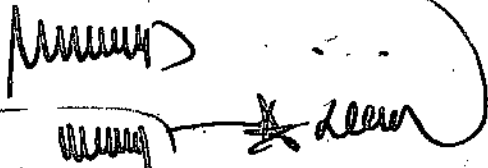
Subject: DEPARTMENTAL APPEAL/REQUEST FOR PROMOTION.

R/Sir

Reference your letter No. SOH-VI/HD/Misc/4-4/2022-23/OM Parkash/Asstt:/DGHS dated 11/04/2023 on the subject noted above, parawise reply are as under:-

1. Mr. OM Parkash was appointed as Office Assistant in the Project of ADP Scheme "Strengthening of Health Directorate FATA" on 03-08-2009. (Annex-A)
2. His services were regularized in pursuance of the Judgment of Peshawar High Court, Peshawar in Writ Petition No. 1378-P/2018 by the Government of Khyber Pakhtunkhwa Health Deptt: vide Notification No. E&A/Health/2-5/2019 dated 30-07-2019. (Annex-B)
3. The Government advise was sought vide this Directorate letter No. 3012/Personal (Promotion) dated 13-11-2020, regarding fixation of their seniority is as under: (Annex-C)
 - i. Their seniority may be determined from the date of creation of posts on regular side i.e. with effect from 07/02/2018 OR
 - ii. From the date of decision of the court OR
 - iii. From the date of regularization order issued by the Govt:/Ex-DHS FATA.
4. In response to the above, the Govt: advised that " Peshawar High Court Peshawar judgment dated 07-12-2018 & 19-12-2018; rendered in Writ Petition No. 926-P/2015 & No. 1378-P/2018 respectively provides only for regularization of the petitioners subject to conversion of their project on regular side and no direction with regard to their regularization w.e.f. first appointment has been issued. Therefore, their very regularization order dated 10-04-2018 requires revision in terms of its issuance with "immediate effect" instead of their "first appointment". Therefore their seniority may be settled in the light of Rules 17 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules 1989, vide No. SO (MND)/HD/1050/DGHS/FATA dated 27-04-2021. (Annex-D)

It is therefore requested that the regularization order of the official concerned issued vide Health Deptt: Notification No. E&A/Health/2-5/2019 dated 30-07-2019 may kindly be revised and issued with "immediate effect" as emphasized in Health Deptt: letter vide No. SO (MND)/HD/1050/DGHS/FATA dated 27-04-2021 issued in light of Judgment in writ petition No. 926-P/2015 dated 07-12-2016. (Annex-E)


Director General Health Services
Khyber Pakhtunkhwa, Peshawar

25/9/2023

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 177/2024

Ali Raza.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

Affidavit

I, Dr. Muhammad Saleem, Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.

Deponent

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar**





(9)

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to the Director General Health Services

Peshawar and not to any official by name

Office # 091-9210269 Fax # 091-9210230

AUTHORITY LETTER

Muhammad Yousaf Jamal Focal Person Litigation Section Directorate General Health Services Khyber Pakhtunkhwa is hereby authorized to attend/defend the court cases and file Parawise Comments / Reply on behalf of the undersigned before the Honorable Khyber Pakhtunkhwa Service Tribunal and its Camp Courts.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar**