

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.7472/2021

Date of presentation of appeal.....17.0.9.2021
Dates of Hearing.....18.09.2024
Date of Decision.....18.09.2024

Shoaib Ahmad, S/O Bakhtiar Ahmad, Cook, Government College of Nursing, Hayatabad, Peshawar.....(*Appellant*)

Versus

1. **Secretary** to Government of Khyber Pakhtunkhwa, Department of Health, Peshawar.
2. **Director General (Health)** Provincial Health Services Academy, Government of Khyber Pakhtunkhwa, Peshawar.
3. **Director (HRM)** Provincial Health Services Academy, Government of Khyber Pakhtunkhwa, Peshawar.
4. **Principal**, Government Postgraduate College Nursng, Hayatabad, Peshawar.
5. **Departmental Promotion Committee**, PHSA through its Chairman, Budhni Road, Peshawar.
6. **Arif Nawaz** S/O Naik Nawaz, Junior Clerk, Divisional Health Development Center (DHDC) Bannu.....(*Respondents*)

Present:

Mr. Muhammad Ayub Khan Shinwari, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER
DATED 21.08.2021.**

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in
brief, as per the memo and grounds of appeal, is that allegedly

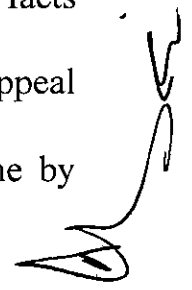


40% of the post of Junior Clerk (BPS-11) was required to be filled by promotion on the basis of seniority cum fitness from amongst the holders of the post of Class-IV employees of the Provincial Health Services Academy with at least two years service; that the appellant despite having five years service as Cook (BPS-03) and qualified as B.A & D.I.T, was ignored in the appointment by the Departmental Selection Committee and private respondents were promoted vide order dated 13.08.2021; that feeling aggrieved, he filed departmental appeal which was rejected on 24.08.2021, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned District Attorney for respondents.

4. 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.



5. From the record, it is evident that the appellant was admittedly junior to the private respondents as per the seniority list annexed with the appeal. He is aggrieved of the impugned

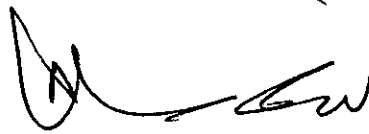
order of promotion of the private respondents to the post of Junior Clerk. The relevant rules of the department are as under:

"40% posts by promotion, on the basis of seniority cum fitness, from amongst the holders of the post of Class-IV employees of PHSA with at least two years service as such, who have passed intermediate examination or its equivalent qualification from a recognized board; and ii. 60% by initial recruitment."

6. Although, departmental promotion committee conducted a typing test considering that to be necessary under the rules, but when we see the rules, the typing test prescribed for initial recruitment and not for promotion, so to this extent, the DPC went on wrong premises.

7. Be that as it may, under the rules, the senior had to be promoted and that has been done in this case. Therefore, seeing no merits in this case, the same is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman




MUHAMMAD AKBAR KHAN
Member (Executive)

S.A #.7472/2021

ORDER

18th Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Heard.
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 18th day of September, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah