


FORM OF ORDER SHEET

Court of _____

Appeal No. 1439/2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11-Sep-24	<p>The appeal of Mr. Syed Ijaz Ali Shah today by Mr. Syed Nauman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 23-Sep-24. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

The appeal of Syed Ijaz Ali Shah, received today i.e. on 21-08-2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. The authority to whom departmental appeal is made/preferred has not arrayed as a necessary party.
2. According to sub rule-4 if rule-6 if Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 3 & 4 are unnecessary/improper parties, in light if the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck off from the list of respondent.
3. Annexure B, C & D are not legible be replaced with legible/better copy.

No. 660 /S.T,

Dt. 3/9 /2024


ASSISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Syed Nauman Ali Bukhari Adv. Pesh.

Sir,

objection-1 removed.

objection-2 - Respondent No.3 deleted whereas Respondent No.4 (PGMI) is necessary party because the appellant has been working over there and the disputed post is also lying in PGMI.

objection-3 - Removed.

Re-submitted.


11/9/24

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1439 /2024.


Syed Ijaz Ali Shah.

VS

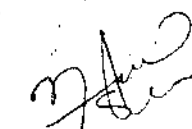
Health Deptt: & Others.

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APPELLANT

THROUGH:


SYED NAUMAN ALI BUKHARI

ADVOCATE HIGH COURT

PESHAWAR.

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1439 /2024

Syed Ijaz Ali Shah Assistant Registrar (Academics) PGMI,
Hayatabad Phase-IV, Peshawar.

(APPELLANT)

VERSUS

1. The Chief Secretary , Govt of Khyber Pakhtunkhwa Civil Secretariat,
Peshawar.
2. The Secretary to Govt: of Khyber Pakhtunkhwa, Health Department
Civil Secretariat, Peshawar.
3. The Chief Executive Officer PGMI Hayatabad Phase-IV Peshawar.

(RESPONDENTS)

**APPEAL UNDER SECTION 4 OF THE KP
SERVICE TRIBUNALS ACT, 1974 AGAINST THE
ORDER DATED 26.03.2024 WHEREBY THE
PROMOTION AS ASSTT: REGISTRAR
(ACADEMICS) WAS GRANTED WITH
IMMEDIATE EFFECT IN UTTER DISREGARD OF
THE RECOMMENDATIONS OF THE
PROVINCIAL INSPECTION TEAM (PIT) AND
AGAINST NOT TAKING ACTION ON THE
REPRESENTATION DATED 22.04.2024 OF
APPELLANT DESPITE LAPSE OF 90-DAYS.**

PRAYER:

2

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO MODIFY THE ORDER DATED 26.03.2024 BY ANTEDATING THE PROMOTION OF THE APPELLANT AS ASSTT: REGISTRAR (ACADEMICS) BPS-17 W.E.F. 03.07.2001 ON REGULAR BASIS WITH ALL DUE PAY FIXATION OF PAY AND ARREARS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is a Law Graduate (LLB) from University of Peshawar, presently working as Assistant Registrar (Academics) (BPS-17) in Post Graduate Medical Institute (PGMI) Hayatabad, Phase IV, Peshawar and have more than thirty four years service at his credit with good record throughout. Copy of the Education testimonials are attached as Annex-A.
2. That a post of Assistant Registrar (Academics) BPS-17 was lying vacant in Postgraduate Medical Institute (PGMI) Peshawar and according to the Service Rules, dated 20th March, 2001, the said post (being selection post) was to be filled by way of promotion from amongst various categories of Health Department staff (i.e Administrative Officers/Office Superintendents/Private Secretaries or Office Assistants) having LLB Degree with five years experience in students/academic affairs in a Medical Institute. Copy of the Service Rules is attached as Annex-B.
3. That being eligible in all respects, the appellant applied for promotion to the said post and was cleared by the Departmental Promotion Committee (DPC) to the post of Assistant Registrar (Academics) in Postgraduate Medical Institute Peshawar on 03.07.2001, however; the Health Department Khyber Pakhtunkhwa denied issuing notification of the appellant without showing any cogent reasons and ironically,

wrong minutes were circulated. Two DPC members i.e the Dear PGMI and the Deputy Secretary Establishment rose objections on those wrongly drafted minutes. In a subsequent DPC meeting held on 25.10.2001, clarification of service rules was sought from the E&A Department. The Establishment Deptt, vide memo No. SOR-II(E&A)13(1)2001 dated 24.11.2001, wrote back to the Health Department that the service rules are quite clear and as to why the correct position was not reflected in the minutes, while the candidate at Serial. No. 01 (the appellant) was eligible and cleared by the DPC in its meeting held on 03.07.2001. The said letter of Establishment Department was circulated and was finally approved by all the DPC members on 06.12.2001. However, the Health Department failed to issue appellant's pending notification. Copy of the letters and minutes of the meetings are attached as Annex-C,D& E.

4. That feeling aggrieved, the appellant filed an appeal before the Services Tribunal Khyber Pakhtunkhwa, (Service Appeal No. 706/2002) and the appeal was remanded back to the Health Deptt to decide it within three (03) months. However, the Health Deptt failed to decide it within the stipulated time. Copy of order of S.T is attached as Annex-F.
5. That feeling further aggrieved, the appellant approached to the Chief Minister Khyber Pakhtunkhwa, Complaints and Redressal Cell Peshawar. On their directions, the Provincial Inspections Team (PIT) conducted inquiry and submitted report on 09.04.2018.

The recommendation of the PIT inquiry report says,

“as the case of Syed Ijaz Ali Shah was not resolved/processed by the Health Department, therefore, the same may be processed for consideration at the appropriate forum for promotion to the post of Assistant Registrar (Academics) with pay fixation w.e.f 03.07.2001”

6. That on receipt of PIT Inquiry Report, the Health Department sought advice of the Establishment Department vide letter No. SOH-III/10-4/2014 (Syed Ijaz Ali Shah) dated 25.09.2018, as to whether the recommendations of PIT at such belated stage are tenable or otherwise. Copy of the letter dated 25.09.2018 is attached as Annex-G.

7. That the Establishment Department vide letter No. SOR-II(E&AD)3-563/2018 dated 11.10.2018 advised the Health Department that the recommendations of the Provincial Inspection Team (PIT) are clear and the same be implemented. Copy of the letter dated 11.10.2018 is attached as Annex-H.
8. That inspite of all above efforts, the pending notification was not issued by the Health Department. Therefore the appellant finally approached to the Peshawar High Court Peshawar vide Writ Petition No.4587/2022 which was decided in favour of the appellant on 23.06.2023. However, again the appellant's pending notification was delayed considerably and on contempt of court proceedings vide CoC 478/2024, the pending notification was issued and that too with immediate effect on 26.3.2024. Copy of the WP^{order} and COC judgments and promotion notification is attached as Annex-I,J and K.
9. That since appellant's promotion notification was issued with immediate effect with total disregard of the DPC minutes 3.7.2001, 25.10.2001, letter of the Health Department dated 6.12.2001 (on which all DPC members had affixed signatures), PIT recommendation and the clarification of the Establishment Department dated 11.10.2018 and so much so clear judgments of the PHC Peshawar in the WP with CoC, the appellant preferred a representation to the Chief Secretary Khyber Pakhtunkhwa on 22.4.2024 for rectification/modification of promotion notification dated 26.03.2024. Copy of representation is attached as Annex-L.
10. That no action has been taken on that appeal so far and the statutory 90 days have been elapsed. The appellant has been struggling for his longstanding right for the last two decades, but each time his rights are denied either due to bureaucratic tactics or by presenting misconceived reports/suggestions to the concerned offices. Thus having no other mean and remedy, the appellant submits this appeal before this august Tribunal on the following grounds.

GROUND:-

- A. That the appellant has not been treated in accordance with law and his rights secured and guaranteed under the Constitution are badly violated by the respondents. Even the appeal of the appellant for anti-dation of his promotion has not been responded within statutory period.

- B. That the impugned Notification is by itself contradictory. The first para of the Notification says about PIT recommendations by referring to date of promotion (03.07.2001) and in 2nd para the respondent notify the promotion with immediate effect and that too without giving any reasons.
- C. That the appellant has been denied his rights of promotion/selection despite having favorable decision in his favor by the DPC, PIT, clear advice of the Establishment Deptt and judgments of KP Services Tribunal, PHC Peshawar in WP and in the CoC. Each time, due to unknown reasons, the appellant has been deprived of his right by colorful exercise of executive powers.
- D. That the acts and omission of the concerned authorities is totally against the judgment of the august court, reported as PLD 2013 (SC)195, Head Note-F&G, wherein principles of appointment/promotion/posting and transfer are laid down once and for all and the alleged bureaucratic practice has strongly been condemned and ensured the protection of rights of civil servants under Article-4 and 9 of the Constitution.
- E. That the appellant was the only eligible candidate being LLB and having ten years requisite experience as per duly approved and notified service rules and the DPC has also already cleared the appellant. More so the Provincial Inspection Team (PIT) and Establishment Deptt opined in appellant's favor, as well as the Provincial Services Tribunal and the Director General Law and Human Rights has also directed them for consideration, but the bureaucracy was not ready to do what is required under the law, rather created undue and illegal hindrances in way of appellant's fundamental rights.
- F. That the appellant has suffered due to Departmental Lethargy and for the fault of the Department, the appellant cannot be denied his financial and retrospective benefits as his legitimate rights has been created under the principle of Legitimate Expectancy. Moreover, depriving the appellant continuously from all financial and consequential benefits of promotion, is violation of his fundamental rights and principles laid down in Anita Turab's case (PLD 2013 SC-195)

- 6
- G. That the denial, and not implementing appellant's rights which are duly protected under Article-4 and 9 of the Constitution amounts to violation of Constitution.
- H. That the state is bound to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principles. It is also the duty of the state to remove disparity in the income and earning of individuals under Article 38 of the Constitution.
- I. That the case in hand involves the violation of fundamental rights of the appellant and there is disparity and discrimination on the part of the Government and is in violation of Article-, 2A, 4, 9, 14, 18, , 25, and 38 of the Constitution of 1973.
- J. That the honorable Supreme Court of Pakistan in many cases has held that promotion should always be granted from the date of availability of post and eligibility, which has stood resolved by the DPC meetings of 03.07.2001,25.10.2001 and letter of the Health Department dated 06.12.2001, agreed and signed by all the DPC members, the appellant should have been notified for promotion to the post of Assistant Registrar (Academics) (BPS.17) in Postgraduate Medical Institute on regular basis w.e.f. 03.07.2001. Hence promotion with immediate effect has made no sense nor could appellant be deprived of the benefits of re-trospectivity under the principle of Legitimate Expectancy.(23 SCMR 686, SCMR 111,23 PLC CS 636-22 SCMR 448)
- K. That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

THROUGH:

APPELLANT

Syed Ijaz Ali Shahi

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT
PESHAWAR

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. _____/2024

Syed Ijaz Ali Shah

V/S

Health Deptt. etc.

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.



 DEPONENT
LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.


 APPELLANT

Syed Ijaz Ali Shah

THROUGH:


 (SYED NOMAN ALI BUKHARI)
 ADVOCATE HIGH COURT
 PESHAWAR

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2024

Syed Ijaz Ali Shah

V/S


Health Deptt. etc.

AFFIDAVIT

I, Syed Ijaz Ali Shah S/o Syed Akbar Shah R/o House No. 8, Street No. 02 Rahatabad P.O PFI Peshawar (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honourable Tribunal.


DEPONENT

IDENTIFIED BY:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT
PESHAWAR

A
9

سید ذوالحجرت رحیمین
University of Peshawar
(Pakistan)

SESSION ANNUAL 1991

SYED IJAZ ALI SHAH Son of SYED AKBAR SHAH and a student
of KHYBER LAW COLLEGE PESHAWAR having passed the prescribed examination
in MAY 19 92, is this day admitted by the University of Peshawar
to the Degree of

Bachelor of Laws

in the SECOND Division

The examination was taken as a whole / in parts

Serial No. 000739

Registered No. 87-P/A-22978

Roll No. 51

7TH OCTOBER, 19 92



Shakil Ahmad
Registrar

Countersigned

[Signature]
Vice-Chancellor

16

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POSTGRADUATE MEDICAL INSTITUTE

10

Hayatabad Medical Complex, Peshawar (Pakistan)

Reg. No. 2842 /PGMI

Date 31-3-2001



Country Code : 92

City Code : (019)

Tel No. Off : 9217190

Fax No. Office : 9217191

EXPERIENCE CERTIFICATE

This is to certify that Mr. Syed Ijaz Ali Shah has worked in the capacity of Office Assistant at this Institute since 23/4/1990 to date.

During these ten years, Mr. Syed Ijaz Ali Shah has carried out his responsibilities in a very satisfactory manner.

He was made responsible for academic affairs which included entrance examinations and interviews of all the minor and major diploma courses, compilation of results, correspondence with Director General Health Services, Secretary to Govt. of NWFP, Health Deptt., Peshawar University, Teachers of the Institute, and Postgraduate students from 23/4/1990 to 10/6/1997.

Besides the above duties, he being LLB, was also made responsible for litigations of the Institute in various courts pertaining to the students as well as teaching staff, which he also performed well from 10/6/1997 to date.

He is still providing guidance to the concerned staff in students affairs of the Institute.

He has kept a good record of the work he has performed and is now well versed with the type of responsibility required for such an important post in the Institute.

S. Khan

DEAN

POSTGRADUATE MEDICAL INSTITUTE

HAYATABAD MEDICAL COMPLEX PESHAWAR

B
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GOVERNMENT OF PUNJAB
HEALTH DEPARTMENT

Lahore the, 20th March, 2001

NOTIFIC FIC.

NO. SOH-III/S-91/99:- In pursuance of the provisions contained in article 5 of the provisional constitution order No.1 of 1999 and in exercise of all other powers enabling him in that behalf, the Chief Executive of the Islamic Republic of Pakistan is pleased to direct that in the health department Notification No. 30(P) V-4-13/75. Pt. II dated Lahore the 20th March, 1982, the following further amendments shall be made, namely:

AMENDMENTS

in the Appendix, -

(a) the existing serial number "1A" shall be renumbered as "1B" and before serial number "1B", as so renumbered the following new entries shall be inserted in the respective columns, namely:

1.	2.	3.	4.	5.	6.	
"1A"	Assistant Registrar (Academic)	Second class LL.B degree and five years experience in academic/ students affairs in a medical Institution.				By promotion from amongst-
				i.		i. administrative officers/ private secretaries/ Superintendents; or
						ii. assistants, or
		Second class LL.B degree and five years experience in academic/ students affairs in a medical Institution.		30-40 years.		iii. by initial recruitment, in the order of preference as aforesaid, in case of non-availability of a qualified candidate, and

(b) after serial number "1B", as so renumbered, the following new entries shall be inserted in the respective columns, namely:-

1.	2.	3.	4.	5.	6.	
"1C"	Private Secretary					By transfer from amongst the Superintendents having been promoted from stenographers.

Handwritten signature and date: 11/10/99

(13)

MINUTES OF THE DPC MEETING HELD ON 3.7.2001 AT 10:00 AM IN THE HEALTH DEPARTMENT, GOVT OF NWFP.

A meeting of the Departmental Promotion Committee was held on 3.7.2001 at 10:00 PM in the Health Department. The following attended:-

1. Mr. Muhammad Salim Khan, In.chair.
Secretary, Health NWFP.
2. Mr. Muhammad Shouab,
Addl. Secretary (Services) Health Deptt.
3. Dean, Post Graduate Medical Institute/Hayatabad Medical Complex,
Peshawar.
4. Mr. Ghulam Jilani Asif,
Deputy Secretary (Reg) E&A Deptt.
5. Dr. Muhammad Iqbal Afridi,
Deputy Director Office of Director General Health Services,
NWFP, Peshawar.
6. Mr. Muntaz Ali Khan,
Deputy Secretary-1,
Health Department.

2- The following cases were discussed and decisions taken are as under:

Item No.1: SELECTION FOR PROMOTION TO THE POST OF ASSISTANT REGISTRAR (ACADEMIC) POSTGRADUATE MEDICAL INSTITUTE /HAYATABAD MEDICAL COMPLEX, PESHAWAR.

After going through the documents of the officials no candidate was found eligible for the post of Assistant Registrar and this item was deferred. It was decided that the post may be filled by initial recruitment through Public Service Commission as and when the ban on appointment is lifted by the Government.

Handwritten notes:
Item No.1
Not agreed as
it was not
decided so
meeting
(Signature)

Item No.2: REGULARIZATION OF CHIEF RADIOGRAPHERS (BPS-16) WORKING ON ACTING CHARGE BASIS.

The committee cleared Mr. Nazir Ahmad for regularization as Chief Radiographer (BPS-16) in light of the Judgment of the NWFP Services Tribunal from 28.5.1995.

The committee after going through the seniority list of Chief Radiographers (B-16) observed that one Mr. Abdul Ali (S.No.9) of the Seniority list who was junior to others was regularized whereas the seniors have been ignored. The case of remaining officials for regularization was deferred with the following observations:-

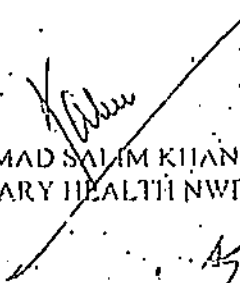
To submit copy of the minutes of DPC by the Director General Health

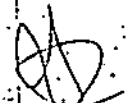
iii. The Committee decided that the case of remaining officials for regularization be resubmitted within a week by the Director General Health Services, after clarifying the above position for submission in the next meeting of DPC.

Item No.3 UPGRADATION OF MEDICAL SOCIAL WELFARE OFFICERS FROM BPS-16 TO BPS-17, IN THE HEALTH DEPARTMENT.

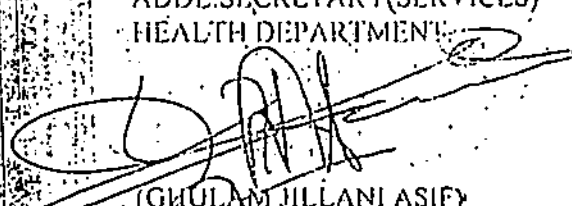
The committee cleared/approved the promotion of the following Medical Social Welfare Officers from BPS-16 to BPS-17 with immediate effect:-


1. Mr. Muhammad Jan.
2. Mr. Rai Shah.
3. Mian Adam Shah
4. Mr. Javed Iqbal
5. Mr. Farhad Khan.
6. Mr. Jehangir Khan.
7. Mr. Muhammad Ishfaq.
8. Mr. Fida Muhammad.
9. Mr. Sher Naeem.

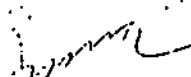

(MUHAMMAD SALIM KHAN)
SECRETARY HEALTH NWFP.


(MUHAMMAD SHOAIB)
ADDL. SECRETARY (SERVICES)
HEALTH DEPARTMENT.

Agreed with me for regularization
DEAN,
POSTGRADUATE MEDICAL INSTITUTE,
HAYATABAD MEDICAL COMPLEX,
PESHAWAR.


(GHULAM JILANI ASIF)
DEPUTY SECRETARY (REG.)
ESTABLISHMENT AND ADMN.
DEPARTMENT.


(DR. MUHAMMAD IQBAL AFRIDI)
DEPUTY DIRECTOR, OFFICE OF THE
DIRECTORATE GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.


(MUMTAZ ALI KHAN)
DEPUTY SECRETARY-I
HEALTH DEPARTMENT.

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(15)

MINUTES OF THE D.P.C MEETING HELD ON 25.10.2001 AT 1100 HOURS IN
THE HEALTH DEPARTMENT GOVT. OF NWFP.

A meeting of the D.P.C. was held on 25.10.2001 at 1100 hours in the Health Department. The following attended:-

1. Mr. Muhammad Saleem Khan, In chair
Secretary Health, NWFP.
2. Dr. Sarfaraz Khan,
Dy: Dean, PGMH/HMC, Peshawar.
3. Mr. Mumtaz Ali Khan,
Deputy Secretary, Health.
4. Mr. Saif ur Rehman Usmani,
Deputy Secretary, Finance Deptt.
5. Mr. Shakirullah,
Section Officer (Reg-III),
E&A Department.
6. Mrs. Ayesha Saeed,
Section Officer (Reg) Health Deptt.
7. Mr. Ali Muhammad,
Assistant Director, Health Directorate.

The following cases were discussed and decisions taken are as under:-

Item No.1. SELECTION OF PROMOTION TO THE POST OF ASSISTANT REGISTRAR ACADEMIC (B-17) AT PGMH/HMC, PESHAWAR.

After going through the documents of the officials it was decided to seek clarification of Services Rules from E&A Deptt. for the promotion to the post of Assistant Registrar Academic (B-17) in PGMH/HMC, Peshawar.

Item No.2. MOVE-OVER CASES

1. Mr. Pikhawari Khan, Ex-Admn. Officer. He reached to the maximum of BPS-17 on 1.12.1990. He earned good ACRs for the years from 1989 to 1993. The committee cleared him for Move-over to BPS-18, w.e.f. 1.12.1993.

Item No. 6 & 7.

MOVE-OVER CASES

1. Mrs. Nusrat Sullana, Nursing Supdt. Maternity Hospital, Peshawar. He reached to the maximum of BPS-17 on 1.12.1998. She earned good ACRs for the year 1994 to 1998. The committee cleared her for Move-over to BPS-18 w.e.f. 1.12.1999.
2. Mr. Muzamil Shah, Office Supdt Mardan Medical Complex Mardan. He reached to the maximum of BPS-17 on 1.12.1998 and granted selection grade BPS-17 on 18.11.2000. Thus he became due for move over to BPS-18 w.e.f. 1.12.2001 which is quite premature and the committee deferred his case.

Sd

(MUHAMMAD SALEEM KHAN)
SECRETARY HEALTH NWFP.

(DR. GAREFARAZ KHAN)
DY. DEAN, PGM/HMC,
PESHAWAR.

(MUMTAZ ALI KHAN)
DEPUTY SECRETARY
HEALTH DEPARTMENT.

(SAIFUR REHMAN USMANI)
DEPUTY SECRETARY,
FINANCE DEPARTMENT.

(GHULAM JILANI ASIF)
DEPUTY SECRETARY (REG.)
ESTABLISHMENT & ADMN.
DEPARTMENT.

(ALI MUHAMMAD)
ASSISTANT DIRECTOR
HEALTH DIRECTORATE, NWFP.

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IV

(17)

GOVERNMENT OF NWFP,
ESTABLISHMENT & ADMN. DEPARTMENT
(REGULATION WING)

NO. SOR. II (E&AD) 13(1) 2001.
Dated 24.11.2001

To
The Secretary,
Govt. of NWFP,
Health Department.

No. 4845
30-11-2001
P.S. Secy. Health.

SUBJECT: MINUTES OF THE DPC MEETING HELD ON 25.10.2001 IN THE HEALTH DEPTT: GOVT. OF NWFP.

Sir,
I am directed to refer to the subject noted above and return herewith the minutes of the above meeting, duly signed by Dy Secretary (Reg), Establishment & Admn. Department with the following clarifications:-

Item No.1 SELECTION OF PROMOTION TO THE POST OF ASSISTANT REGISTRAR ACADEMIC (B-17) AT PGMI/HMC, PESHAVAR.
The Service rules for the post are quite clear and the candidate at S.No.I of the working paper is eligible for promotion to the post of Assistant Registrar (Academic). This is why he was cleared by the DPC in its earlier meeting. However, the correct position in this regard could not be reflected by the A.D. in the last minutes

Item No.5 REGULARICATION OF CHIEF RADIOGRAPHERS (B-16) WORKING ON ACTING CHARGE BASIS.
Retrospective regularization of officials promoted on acting charge basis are permissible according to the policy instructions of this Provl. Govt. circulated vide letter dated 13.4.87

Item No.4 Since the candidate namely Ghulam Sadiq has been granted selection grade (B-16) therefore he may produce LPC duly countersigned by the Audit Office (Instead of pay slip) for the grant of move over 1.1.2.1999.

Yours obediently,

Shakir Ullah
(SHAKIR ULLAH)
SECTION OFFICER (REG. II)

Agreed
30/11
Agreed
13/12
12/11

Agree with the clause of the Est Deptt.

32
Imdadullah

Amir P. **II**

E (12)

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

No. 30 (Reg) DPe/KC/D.001
Dated 6.12.2001.

To

1. The Deputy Secretary,
Government of NWFP,
Finance Department.
- ✓ 2. The Deputy Secretary,
Government of NWFP,
Industries Deptt.
3. The Deputy Dean,
PGM/HMC, Peshawar.
- ✓ 4. The Assistant Director,
DGHS Office, Peshawar.

Subject: MINUTES OF THE DPC MEETING HELD ON 25.10.2001 IN
THE HEALTH DEPARTMENT.

I am directed to refer to the subject mentioned above and to forward herewith a copy of E&A Department letter No. SDR-II(E&AD)13(I)2001 dated 24.11.2001 along with a copy of the minutes of the DPC meeting held on 25.10.2001 under the chairmanship of Secretary to Govt. of NWFP, Health Department for information and with the request that if you agree with E&A department's clarification then kindly sign the letter of E&A Department so that the notification be issued.

Imdadullah
07/12/2001

Gayesha Saabiy

GAYESHA SAABIY
SECTION OFFICER (REG)

c.c to:

P.S to Secretary Health, NWFP, Peshawar.

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMN. DEPARTMENT.
(REGULATION WING)

NO. SOR. II (EXAD) 13(1) 2001

Dated 24.11.2001

To
The Secretary,
Govt. of NWFP,
Health Department

SUBJECT: MINUTES OF THE DPC MEETING HELD ON 25.10.2001 IN
THE HEALTH DEPTT. GOVT. OF NWFP.

Sir,
I am directed to refer to the subject noted above and
return herewith the minutes of the above meeting, duly signed by
By Secretary (Reg), Establishment & Admn. Department with the
following clarifications:

Item No. 1 SELECTION OF PROMOTION TO THE POST OF ASSISTANT
REGISTRAR ACADEMIC (B-17) AT PQMI/HMC, PESHAWAR.

The Service rules for the post are quite clear
and the candidate at S.No. I of the working paper is
eligible for promotion to the post of Assistant
Registrar (Academic). This is why he was cleared by
the DPC in its earlier meeting. However, the correct
position in this regard could not be reflected by
the A.D. in the last minutes.

Item No. 5 REGULARIZATION OF CHIEF RADIOGRAPHERS (B-16) WORKING
ON ACTING CHARGE BASIS.

Retrospective regularization of officials promoted
on acting charge basis are permissible according
to the policy instructions of this Provl. Govt.
circulated vide letter dated 13.4.87.

Item No. 4 Since the candidate, namely Ghulam Sadiq, has been
granted selection grade (B-16) therefore he may
produce LPC duly countersigned by the Audit Office
(Instead of pay slip) for the grant of move over
1.1.2.1999.

Yours obediently,

Shaker
(SHAKIR ULLAH)
SECTION OFFICER (REG. II)

ATTESTED
Khair
E. Khair

To set aside Order of promotion dated - 18/03/2002 of Director General Health Services, N.W.F.P. (containing applications of staff for the post of Assistant Registrar (Medical) P.M.M.N.C. Peshawar for which the Applicant has already been awarded the promotion by the Departmental Promotion Committee (D.P.C.) on 23/07/2001.

TRIBUNAL ACT 1974

APPEAL UNDER SECTION 4 OF N.W.F.P. SERVICES

- 1. The Chief Secretary N.W.F.P. Peshawar
- 2. The Secretary Health N.W.F.P. Peshawar
- 3. The Director General Health Services, N.W.F.P. Peshawar
- 4. The Dean Postgraduate Medical Institute, Hayatabad
- 5. Medical Complex, Peshawar
- 6. Secretary 5566 Mirans, Chief Peshawar

Appellant
Syed Ijaz Ali Shah, Office Assistant, Postgraduate Medical Institute, Hayatabad Medical Complex, Peshawar

VERSUS

Respondents



Appeal No. 706 2002

Before the N.W.F.P. Services Tribunal, Peshawar

Handwritten notes and signatures at the bottom of the page, including a large '80' in a circle and some illegible scribbles.

Better Copy

91

97

Before the N.W.F.P Service Tribunal Peshawar.

Appeal No. 706/2002

Syed Ijaz Ali Shah Office Assistant Post Graduate Medical Institute, Hayatabad Medical Complex, Peshawar

Appellant

Versus

1. The Chief Secretary N.W.F.P Peshawar
2. The Secretary Health N.W.F.P Peshawar
3. The Director General Health Services, N.W.F.P Peshawar
4. The Dean Post Graduate Medical Institute, Hayatabad Medical Complex, Peshawar
5. The Secretary Establishment N.W.F.P Peshawar..... Respondents

APPEAL UNDER SECTION OF NWFP SERVICE TRIBUNAL ACT 1974.

Prayers

To set aside Office Notification, dated:- 18-03-2002 of Director General Health Services, N.W.F.P, calling applications afresh for the post of Assistant Registrar (Academic) PGMI/HMC Peshawar, for which the Appellant has already been cleared for promotion by the Departmental Promotion Committee (DPC) on 03-07-2001.

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(22)

SP

Order

Appeal No. 706/2002, dated 27-09-2006

The appellant in person is present while his council is absent. Mr. Nasrullah, Assistant, & Muhammad Younas, Assistant for respondent No. 2 & 3 respectively are present. Sami-ud-Din, Litigation Assistant is present. The Appellant has come to appeal that he was considered in the DPC meetings on 03-07-2001, 10-09-2001 & 25-10-2001 for promotion against the post of Assistant Registrar Academics because of his qualification and experience required for the post but notification for promotion in this regard has been delayed by respondent No. 2 in violation of rules.

The respondents have stated in the arguments / written reply that the case of the appellant is under-consideration and has not been decided so far. They stated that the appeal at this stage is premature and requires to be dismissed. The tribunal agrees with consideration of respondent department as well as AGP who opposed the appeal on the same grounds, as the direct order has not been passed so far in this regard.

The appeal is thus at this stage premature and dismissed.

However, the respondent department is advised to resolve the issue within three months in the light of relevant service rules. No orders as to cost and the file be consigned to record after completion.

Sd
Member

Sd
Member

Appeal NO 706/2002

2



Date of Order or Proceedings

Order or other Proceedings with Signature of Judge or Magistrate, or that of parties or counsel where necessary

27-9-06

The appellants
person is present
while the respondent
is absent. Mr. Yasrullah
Asst. 2. Mohamad. Younis
D-500) for restriction
No 2 & 3 respectively
are present. Some other
d. T. Gabar Post is present
The appellants have come
in appeal that the same
considered in the APC
Meeting on 3.7.2001,
10.9.2001 & 25.10.2001
for promotion against
the post of Assistant
District Officer
because of his qualification
is not proper.

ATTESTED

BY
Kyber Peshawar
Service Tribunal
Peshawar

The defendant
 at the time of the
 arrest was in a
 state of intoxication
 and was unable to
 give a rational
 explanation of his
 actions. The
 defendant's
 behavior was
 consistent with
 the symptoms of
 acute alcohol
 intoxication.

ATTEST

1. Date of Order or Proceedings
 2. Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

95

95

956

GS AND JWPY 157 P. 2,000 P. 2,000 P. 2,000 P. 2,000

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
2	<p>No order as to costs. The debt has been assigned to the unit of the court.</p>

Edy Messolan

Edy Messolan

Certified to be true copy
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application	17-2-2014
Number of Cases	2000
Usual	12
Total	2
Name of Case	14
Date of Completion	17-2-2014
Date of Delivery	17-2-2014

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VII
28

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH-III / 10-4/2014(Syed Ijaz Ali Shah)
Dated the Peshawar 25th September 2018

Better copy

To

The Secretary to
Govt of Khyber Pakhtunkhwa
Establishment Department

Subject: PENDING NOTIFICATION IN R/O SYED IJAZ ALI SHAH
ADMINISTRATIVE OFFICER TO THE POST OF ASSISTANT
REGISTRAR (ACADEMICS) BS.17 PGMI PESHAWAR ALONG WITH
BACK BENEFITS

Dear Sir

I am directed to refer to your letter No. SOR II (E & AD)
593/2018 dated 15.05.2018 on the subject cited above in respect of Syed Ijaz
Ali Shah Superintendent BS.17 working as Administrative Officer in
Postgraduate Medical Institute Hayatabad Peshawar with effect from
03.07.2001.

It is worth noting here that the promotion case of the officer
concerned was processed in the DPC held on 03.07.2001. However, the
minutes of the said DPC reveals that the promotion of the officer concerned
to the post of Assistant Registrar (Academics) B.17 was deferred and he was
not recommended for promotion. However, the then Deputy Secretary
(Regulation) E & A Department being member of the said DPC, furnished
dissenting note under letter stating that the incumbent was cleared for
promotion to the post of Assistant registrar (Academics) B.17 in the meeting
of DPC but the minutes of the DPC did not reflect what had been decided in
the meeting. Even then the incumbent was not promoted at that time.

Resultantly, Syed Ijaz Ali Shah moved departmental appeal for his
promotion to Health Department on the basis of the said dissenting remarks
which were either filed or regretted. (copy enclosed)

It is further added that feeling aggrieved the applicant submitted a complaint
to the Chief Minister's Secretary for Peshawar.

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"As the case of the Syed Ijaz Ali Shah was resolved / processed by the Health Department therefore the same may be processed for consideration at the appropriate forum for the promotion to the post of Assistant Registrar (Academics) with pay fixation w.e.f 03.07.2001".

In view of the above it is therefore requested that necessary advice/guideline may kindly be conveyed as to whether the recommendations of PIT at such belated stage are tenable or otherwise please.

Encl: As above.

Your's faithfully

Section Officer II

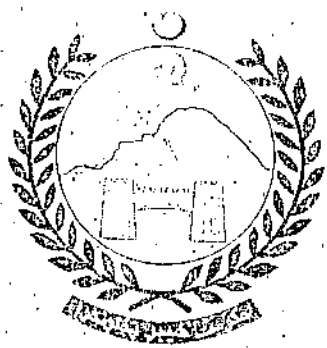
Endst: even no & date

Copy forwarded to:-

1. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
2. P.S. to Secretary Health Khyber Pakhtunkhwa.

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CONFIDENTIAL



PROVINCIAL INSPECTION TEAM, KHYBER PAKHTUNKHWA

INQUIRY REPORT

PENDING NOTIFICATION IRO SYED IJAZ ALI SHAH
ADMINISTRATIVE OFFICER TO THE POST OF ASSISTANT
REGISTRAR (ACADEMICS) BPS-17, PGMI PESHAWAR ALONG
WITH BACK BENEFITS

CONFIDENTIAL

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PROVINCIAL INSPECTION TEAM, KHYBER PAKHTUNKHWA

INQUIRY REPORT

Subject: PENDING NOTIFICATION IRO SYED HAZ ALI SHAH
ADMINISTRATIVE OFFICER TO THE POST OF
ASSISTANT REGISTRAR (ACADEMICS) BPS-17, PGI
PESHAWAR ALONG WITH BACK BENEFITS.

1. ORDER OF INQUIRY

The order of the inquiry in the instant case was received from the Chief Minister's Complaint & Redressal Cell, Chief Minister's Secretariat vide letter No. 'S' (C&RC)/1-65/Syed Ijaz Ali Shah/app/3552/w dated: 14.3.2017 with the direction to conduct an inquiry into the case (Annex-A).

2. COMPLAINT

a) One Syed Ijaz Ali Shah complained that he was cleared for promotion to the post of Assistant Registrar (Academics), Post Graduate Management Institute (PGMI) by the Departmental Promotion Committee (DPC), Health Department but he was not promoted.

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the aforementioned post since 3-7-2001 by the Health Department.

- b. Syed Ijaz, Ali Shah prayed that he deserved to be promoted w.e.f 3-7-2001 along with all the benefits.

3. INQUIRY FRAMEWORK

- a. To inquire as to whether the complainant was eligible for promotion to the post of Assistant Registrar (Academics).

4. INQUIRY PROCEEDINGS

- a. The Secretary Health Department, Khyber Pakhtunkhwa was requested on 9-3-2017 to depute an officer to attend the office of PIT on 11-4-2017 for hearing and recording statement (Annex-B).
- b. Assistant Director, Directorate of Health attended the office of PIT on the aforementioned date and stated that the instant case pertains to the Health Department (Annex-C).
- c. The Secretary Health Department was again requested on 13-4-2017 to depute an officer well conversant with the case to attend the office of PIT on 18-4-2017 for hearing and recording statement (Annex-D).
- d. The Health Department was represented by the Deputy Secretary and provided a copy of the reply already submitted to the PGMI on 17-4-2017 (Annex-E).
- e. The Dean PGMI was requested dated: 31-10-2017, to provide appointment order, move over order, service

the DPC for promotion to the post of Superintendent (Annex-F).

- f. The CEO of the PGMI provided record on 2-11-2017 that included appointment order of Syed Ijaz Ali Shah, confirmation order as Assistant, office order as Assistant (selection grade), office order of promotion to the post of Superintendent and notification regarding charge assumption as Administrative Officer of PGMI. The Institute provided more relevant record at a later date that included Advertisement of the post of Assistant and Ex-Post Facto Sanction (Annex-G, H, I, J, K, L & M).

5. OBSERVATIONS

Having perused the available record, statements of the concerned, the observations of PIT are as under:-

- a. Syed Ijaz Ali Shah; the complainant, was appointed as Assistant (BPS-11) on 23-4-1990 by the Post Graduate Medical Institute (PGMI) and his services in the Institute were confirmed on 6-11-1990 by the Institute.
- b. On 21-9-1991 the Government accorded Ex-Post Facto sanction to his appointment as Assistant (BS-11) from 23-4-1990 (Annex-L).
- c. It was observed that Syed Ijaz Ali Shah obtained the Degree of LLB on 7-10-1992 from University of Peshawar (Annex-N).
- d. He was granted Selection Grade in BPS-15 on 10-7-2001 with effect from 12-2-1994 by the DC Hospital.

- 34
- e. Health Department on 20-3-2001 notified amendment in rules for promotion to Assistant Registrar (Academics) PGMI (Annex-O).
- f. As Syed Ijaz Ali Shah was serving in PGMI since 23-4-1990 as Assistant therefore in order to seek career progression he requested Directorate of Health Services on 26-3-2001 through proper channel on 31-3-2001 that he may be promoted to the post of Assistant Registrar (Academics) lying vacant since 1997/98 and that he fulfills the criteria for the post (Annex-P,Q).
- g. On 3-4-2001, the Directorate of Health Services requested Health Department to place the case of Syed Ijaz Ali Shah before the Departmental Promotion Committee (DPC) for determining the suitability of the candidate (Annex-R).
- h. It was also observed that according to DPC meeting minutes held on 3-7-2001 it was decided that due to lack of availability of any suitable candidate for the post of Assistant Registrar (Academics) the post might be filled by initial appointment through Public Service Commission. The then Deputy Secretary (Reg.), Establishment and Administration Department (E&A Deptt.) in his remarks disagreed with the aforementioned proposal by recording his dissenting note while signing the DPC minutes and the same were endorsed by the PGMI signatory (Annex-S).
- i. Another meeting of the DPC was held on 25-10-2001 in Health Department where in the clarification regarding

- Service Rules from E&A Deptt. for promotion to Assistant Registrar (Academics) was sought (Annex-T).
- j. The minutes of the above mentioned meeting were signed by the concerned authorities of E&A Deptt. and sent back to the Health Department on 24-11-2001 along with the clarifications (Annex-U).
 - k. On 6-12-2001 Section Officer (Reg), requested the Directorate of Health Services that in case the Department agrees with the E&A Deptt. clarifications then the letter may be signed so that the notification could be issued (Annex-V).
 - l. On 17-10-2002 Establishment Department (Regulation Wing) sought clarification from the Health Department regarding non processing of Syed Ijaz Ali Shah case (Annex-W).
 - m. Syed Ijaz Ali Shah, feeling aggrieved, appealed to Service Tribunal and the worthy Tribunal on 27-9-2006 advised the Health Department to resolve the issue within three months time in light of the relevant service rules but no action was taken during the course (Annex-X).
 - n. Syed Ijaz Ali Shah was promoted through an Office Order by DG Health to the post of Superintendent (BPS-16) on 1-1-2011 (Annex-J).
 - o. Following the aforementioned promotion order, the charge assumption notification of Syed Ijaz Ali Shah as Administrative Officer in PGMI was issued by the DG

p. The Health Department reply on 17-4-2017 instant case to the PGMI is worth mentioning where in the Department regretted the promotion request of Syed Ijaz Ali Shah, Administrative Officer to the post of Assistant Registrar (Academics) BS-17 on the grounds that;

The request for promotion of the complainant is time barred as his case was processed back in 2001.

The complainant's request of back benefits is not entertain-able as he was never promoted to the post of Assistant Registrar (Academics) BS-17 (Annex-E).

6. FINDINGS

The Provincial Inspection Team's findings are as follows:-

- a. Syed Ijaz Ali Shah being declared fit for promotion by the Health & Establishment Department was not promoted to the post of Assistant Registrar (Academics) PGMI in 2001.
- b. The Department did not resolve his case in 2006 even after the advice of the Service Tribunal.
- c. The Department despite having fulfilled the criteria for being promoted to the post of Assistant Registrar (Academics) in 2001, Syed Ijaz Ali Shah was not promoted till date. Resultantly his constitutional rights under Articles: 18, 25 and 27 were violated (Annex-Y).
- d. The Health Department at Para-5 (q) agreed with the fact that instant case of promotion of Syed Ijaz Ali Shah was not processed in 2001 and that he was not promoted to the post of Assistant Registrar (Academics).

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7. RECOMMENDATIONS

Based on the observations and findings of this report, recommendations of the PIT are as follows:-

- 1. As the case of the Syed Ijaz Ali Shah was not resolved by the Health Department therefore the same may be processed for consideration at the appropriate forum for the promotion to the post of Assistant Registrar (Academics) with pay fixation w.e.f 3-7-2001.

9-4-2018
 WALEED KHAN AFRIDI
 Research Officer
 Provincial Inspection Team
 Khyber Pakhtunkhwa

HUSSAIN SHAH
 Member (General)
 Provincial Inspection Team
 Khyber Pakhtunkhwa

FARRAKH SAIR
 Chairman
 Provincial Inspection Team
 Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMIN. DEPARTMENT
(REGULATION WING)

VIII H
H/C

No.SOR-II(E&AD)3-563/2018
Dated Peshawar 11.10.2018

To

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

SUBJECT: Pending Notification in the Syed Ijaz Ali Shah Administrative Officer to the post of Assistant Registrar (Academics) BS-17, PGME Peshawar alongwith Back Benefits.

Dear Sir,

I am directed to refer to your letter No.SOH-III/10-4/2014 (Syed Ijaz Ali Shah) dated 25th September, 2018 on the subject noted above and to advise that the recommendations of the Provincial Inspection Team (PIT) report are clear and the same be implemented.

Yours faithfully,

Handwritten signature and date: 11/10/2018

Handwritten signature and date: 11.10.2018

SECTION OFFICER (R-10)
Phone No.9211785

Handwritten notes and signatures at the bottom of the page, including 'SM, KP' and '11/10/2018'.

I
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PESHAWAR HIGH COURT PESHAWAR

Form "A"

Order Sheet

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
2	3
21.6.2023	<p><u>WP 4587-P/2022</u></p> <p>Present:</p> <p style="padding-left: 40px;">Mr. Zartaj Anwar, Advocate, for the petitioner.</p> <p style="padding-left: 40px;">M/s. M. Asif Yousafzai & Barrister Syed Saad Ali Shah, for the respondents.</p> <p style="text-align: center;">*****</p> <p><u>ABDUL SHAKOOR, J.</u> Through the writ instant, the petitioner has prayed for issuance of direction to the respondent to notify his pending notification of promotion as Assistant Registrar (Academics) on regular basis with pay fixation from 03.7.2001.</p> <p>2. In essence, the grievance of the petitioner is that he applied for promotion to the post of Assistant Registrar (Academics) in Postgraduate Medical Institute, Peshawar "<i>PGMI</i>" where he was already serving as Assistant, and was cleared by the Departmental Promotion Committee on 03.7.2001; but, the Health Department, Khyber Pakhtunkhwa "<i>respondent No.2</i>" denied to issue</p>

L/D

firstly exhausted his remedy from the Service Tribunal then approached the Chief Minister's complaint cell where an inquiry was conducted, and as per report, the Provincial Inspection Team "PIT" directed/recommended respondent No.2 to resolve/process the promotion matter of the petitioner for consideration at the appropriate forum. Pursuant to the report, the Health Department sought advice of the Establishment department; in response, the former was advised vide letter dated 11.10.2018 to implement the recommendation of the PIT. Despite that, nothing could be done; hence, the instant petition.

3. Pursuant to notice, respondent No.2 filed its Para-wise comments and strongly resisted the issuance of the desired writ by raising numerous legal and factual objections. He commented that the petitioner was not cleared by the DPC as is evident from its minutes of the meeting dated 03.7.2001 because none of the candidates was found eligible for promotion to the post of Assistant Registrar (Academics) thus, it was decided that the post might be filled by initial recruitment through Public Service Commission after lifting of ban.

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stance of the petitioner in his Para-wise comments.

4. Having heard the learned counsel for the parties at length and going through the record, it is an admitted position that since 2001 till date, the matter of promotion of the petitioner to the post of Assistant Registrar (Academics) could not be decided by respondent No.02 through speaking order despite the fact that respondent No.4 fully support the case of the petitioner for promotion to the desired post. No material has been produced by respondent No.2 in aid of its stance that none of the candidates was found eligible for promotion to the post of Assistant Registrar (Academics) in 2001 or afterward the said post was ever advertised in the newspaper by the Public Service Commission so as to fill it through initial recruitment.

5. In view thereof, the instant writ petition stands disposed of with direction to respondent No.2 to decide the case of the petitioner qua promotion to his desired post through speaking order, within one month.

Announced:
21.6.2023


JUDGE


BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

C.O.C. No. 478/2023

IN

Writ Petition No. 4587-P/2022

Syed Ijaz Ali Shah, Office Superintendent PGMI Hayat Abad
Peshawar.

PETITIONER

VERSUS

1. Mr. Amir Sultan Tareen, Secretary Health Deptt: Civil Secretariat Peshawar.
2. Mr. Dr. Shaukat Ali, D.G Health Services, Peshawar.

RESPONDENTS

CONTEMPT OF COURT PETITION UNDER
ARTICLE 204 OF THE CONSTITUTION OF THE
ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ
WITH SECTION 3 OF THE CONTEMPT OF
COURT ORDINANCE 2003 FOR INITIATING
CONTEMPT PROCEEDINGS AGAINST THE
RESPONDENT FOR NOT OBEYING THE
DIRECTIONS OF THIS AUGUST COURT GIVEN
IN WRIT PETITION NO. 4587/2022 DATED
21.06.2023.

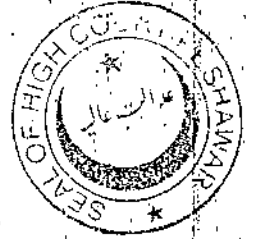
RESPECTFULLY SHEWETH:

Brief facts giving rise to the present COC petition are as under:-

1. That the Petitioner filed a writ petitioner against the respondents for not notifying the petitioner's promotion as Asstt: Registrar w. e. from 03.07.2001 due to non-finalization of the case of the petitioner and also due to making petitioner's

COC478-2023 in WP4587-2022 SYED IJAZ ALI SHAH VS AMIR SULTAN TAREEN ETC PGS17 CF

ATTESTED
EXAMINER
Peshawar High Court
Peshawar



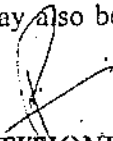
case a ping pong ball between the Offices. Copy of memo of W.P is attached as Annexure - A

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2. That the petitioner also approached the Provincial Inspection Team for the redressal of his grievances and the PIT has categorically endorsed the stance of the petitioner and direct the respondents to grant promotion to petitioner with all back and consequential benefits as the fault was on the part of respondents.
3. That even then the respondents were failed to comply with the directions of the PIT, which resultanty compelled the petitioner to file above cited writ petition which was finally heard on 21.06.2023 and the respondent No.2 (Secretary Health) was directed to decide the petitioner's promotion to the post of Assistant Registrar (Academics) within one month through a speaking order. Copy of the Judgment is attached as Annexure - B.
4. That thereafter the petitioner requested the respondents so many times but again they turned deaf ears to the requests and as such the compliance of the court's order is still awaited despite lapse of sufficient time.
5. That being the Apex Court of the Province, the respondents are legally bound to obey the directions of the august Court in letter and spirit, but the respondents have not complied with it.
6. That the inaction and omission of the respondent shows that they are not willing to obey the judgment of this Honourable Court in letter and spirit which certainly amounts to Contempt of Court.
7. That the judgment is still in the field and has not been suspended or set-aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to obey the judgment dated 21.06.2023 of this Honourable Court in letter and spirit.
8. That in the present circumstances the petitioner has no other remedy but to file the instant Contempt of Court Petition due to the inaction of the respondent.

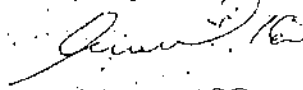
ATTESTED
EXAMINER
Peshawar High Court
Peshawar

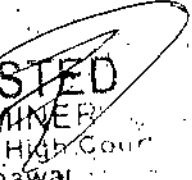
It is, therefore, most humbly prayed that a proper Contempt of Court proceedings may be initiated against the respondents and they may also be directed to implement the directions of the Peshawar High Court, Peshawar delivered in judgment dated 21.06.2023 without any further delay and to pass the promotion order of the petitioner w.e. from 03.07.2001 with all back and consequential benefits.. Any other remedy which this august Court deems fit and appropriate that may also be awarded in favour of the petitioner.


PETITIONER

Syed Ijaz Ali Shah

THROUGH:-


Zartaj Anwar ASC


ATTESTED
EXAMINER
Peshawar High Court
Peshawar

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

C.O.C. No. 478 /2023
IN
Writ Petition No. 4587-P/2022

C-5

Syed Ijaz Ali Shah, Office Superintendent PGMI Hayat Abad
Peshawar.

PETITIONER

-VERSUS

1. Mr. Amer Sultan Tareen, Secretary Health Deptt: Civil Secretariat Peshawar.
2. Mr. Dr. Shaukat Ali, D.G Health Services, Peshawar.

RESPONDENTS

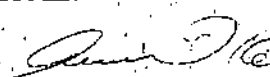
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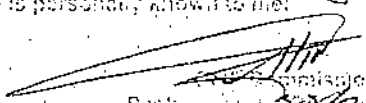
I, Syed Ijaz Ali Shah, Office Superintendent PGMI Hayat Abad Peshawar, (Petitioner) do hereby solemnly affirm and declare that the contents of this Contempt of Court Petition are true and correct to the best of my knowledge and belief.

DEPONENT

17301-1569974-7
0334 5498021

IDENTIFIED BY:


Zartaj Anwar Advocate
Peshawar.

No. 478 /2023
Certified that the above was verified on solemn affirmation before me in office, this 27 day of Sept 2023 by Syed Ijaz Ali s/o Supdt who was identified by Zartaj Anwar who is personally known to me.

Date: 27/9/2023

COC478-2023 in WP4587-2022 SYED IJAZ ALI SHAH VS AMIR SULTAN TAREEN ETC PGS17 CE

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 317 of
the Qanun-e-Shahadat Act 1984

27 JAN 2024


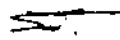
46

PESHAWAR HIGH COURT PESHAWAR

Form "A"

Order Sheet



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
2	3
28.9.2023	<p>COC 478-P/2023 in WP 4587-P/2022</p> <p>Present:</p> <p>Mr. Imran Khan, Advocate, for the petitioner.</p> <p>*****</p> <p>Let the respondents be put on notice to file their written reply so as to reach this Court within a fortnight positively:</p> <p style="text-align: center;">  JUDGE </p> <p style="text-align: center;">  JUDGE </p> <p style="text-align: right;"> CERTIFIED TO BE TRUE COPY EXAMINER Peshawar High Court, Peshawar Authorized Under Article 14.7 of the Constitution of the Islamic Republic of Pakistan, 1973 27 JAN 2024 </p>

Nazir

(D.B)

Hon'ble Mr. Justice Abdul Shakoor, J
Hon'ble Mr. Justice Syed Arshad Ali, J

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

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Date of Order or Proceedings	Order or others Proceedings with Signature of Judge
10.11.2023.	<p style="text-align: center;">2</p> <p>COC No.478-P/2023 with CM No.2373-P/2023 in W.P No.4587-P/2022.</p> <p>Present: Mr. Zartaj Anwar, Advocate, for the petitioner.</p> <p>Mr. Mubashir Manzoor, AAG, for the respondents.</p> <p style="text-align: center;">*****</p> <p>The latter seeks time to produce the compliance report. Allowed. Adjourned to a date in office.</p> <p style="text-align: center;">JUDGE</p> <p style="text-align: center;">JUDGE</p> <p style="text-align: center;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: center;">EXAMINED</p> <p style="text-align: center;">Peshawar High Court, Peshawar Authorized Under Article 187 of the Constitution of Pakistan, 1973</p> <p style="text-align: center;">27 JAN 2024</p>

(D.B) (Hon'ble Mr. Justice Syed Arshad Ali & Hon'ble Mr. Justice Wiqar Ahmad)
Mahmood Shah, SSS

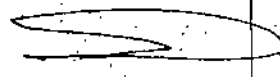

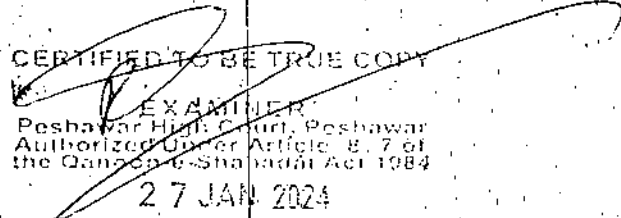
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PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

C18



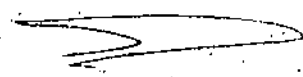

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
1.	2.
19.12.2023.	<p>COC No.478-P/2023 with CM No.2373-P/2023 in WP No.4587-P/2022 (D).</p> <p><u>Present:</u> Mr. Zartaj Anwar, Advocate for petitioner.</p> <p>Mr. Fayaz Ali Shah Banori, AAG for the respondents.</p> <p>*****</p> <p>Latter undertakes to file the desired reply to the COC on behalf of the respondents within seven days. Adjourned to 16.01.2024.</p> <p> JUDGE</p> <p> JUDGE</p> <p>CERTIFIED TO BE TRUE COPY  EXAMINER Peshawar High Court, Peshawar Authorized Under Article 8, 7 of the Qanun-e-Shahadaat Act 1984 27 JAN 2024</p>

PESHAWAR HIGH COURT PESHAWAR

Form "A"

Order Sheet





Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
2	3
<p>16.01.2024</p>	<p><u>COC No.478-P/2023 in Writ Petition No.4587-P/2022.</u></p> <p><u>Present:</u></p> <p>Mr. Masood Azam Awan, Advocate, for the petitioner.</p> <p>Barrister Syed Muhammad Shah, AAG, for the respondents.</p> <p align="center">*****</p> <p>The latter seeks time to file written reply to the instant COC. Allowed. May do so within a week positively, failing which the law shall take its course. Adjourned to a date in office.</p> <p align="right">  JUDGE </p> <p align="right">  JUDGE </p> <p align="right"> CERTIFIED TO BE TRUE COPY EXAMINER, Peshawar High Court, Peshawar Authorized Under Article 5, 7 of the Accession of States Act 1956 27 JAN 2024 </p>
<p>No.</p> <p>Date of Presentation of ...</p> <p>No of Pages ... 8</p> <p>Copying fee ...</p> <p>Total ... 32-00</p> <p>Date of Preparation of Copy ... 27-01-2024</p> <p>Date of Delivery of Copy ... 27-01-2024</p> <p>By ...</p>	<p>30621</p> <p>27-01-2024</p> <p>32-00</p> <p>27-01-2024</p> <p>27-01-2024</p> <p>0.6</p>

Andal Chaffar

(DB)

Hon'ble Mr. Justice S. M. Atiqur Shah, J
Hon'ble Mr. Justice Syed Arshad Ali, J

PESHAWAR HIGH COURT PESHAWAR
ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2
08.04.2024	<p><u>COC 478/2023 with CM 2373/2023 In WP 4587/2022</u></p> <p>Present: Mr. Zartaj Anwar, advocate, for the petitioner. Mr. Bashar Naveed, AAG, for the official respondents.</p> <p>*****</p> <p><u>MUHAMMAD IJAZ KHAN, J.-</u> Today, when this COC was taken up, learned DAG produced <i>Notification No.SOH-VI/HD/4-4/Misc/2022-23-24/Ministerial/Ijaz Ali Shah, dated 26.03.2024</i>, and stated that the order of this Court has been implemented, however, the learned counsel for the petitioner states that though the respondents have implemented the order of this Court by granting the promotion but the same has been granted with immediate effect, whereas recommendation of the petitioner for promotion as Asstt. Registrar by the P.I.T was w.e.f 03.07.2001, therefore, to this extent he submits that he will not press this COC, however, he may be allowed to challenge the same before the appropriate forum through proper remedy.</p> <p>2. As such, the instant COC is disposed of, however, the petitioner shall be at liberty to challenge the said order, dated 26.03.2024, qua its retrospectivity, before the appropriate forum, if he is so advised.</p> <p><u>Announced:</u> 08.04.2024</p> <div style="text-align: right;">  JUDGE </div> <div style="text-align: right; margin-top: 20px;">  JUDGE </div>



K (50) K

GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

Dated Peshawar, the 26th March, 2024

NOTIFICATION

No. SOH-VI/HD/4-4/Misc/2022-23-24/Ministerial/Ijaz Ali Shah Whereas, Peshawar High Court Peshawar vide Judgment Dated 21.06.2023 in Writ Petition 4587-P/2022 has disposed of the promotion case of the petitioner, Syed Ijaz Ali Shah, Office Superintendent (BPS-17) with the direction that "respondent No.2 to decide the case of the petitioner qua promotion to his desired post through speaking order within one month".

Whereas, Petitioner feeling aggrieved filed a service appeal No. 706/2002 before the Provincial Services Tribunal with the directions "the respondents to resolve the issue within 03 months". In this regard, Provincial Inspection Team (PIT), Khyber Pakhtunkhwa, also conducted an inquiry. The Provincial Inspection Team (PIT) has recommended that "As the case of the Syed Ijaz Ali Shah was not resolved by the Health Department, therefore the same may be processed for consideration at the appropriate forum for the promotion to the post of Assistant Registrar (Academics) with pay fixation w.e.f 03.07.2001".

Whereas, a meeting was held on 23rd November, 2023 at 1200 hrs under the Chairmanship of worthy Secretary Health in the committee room of Health Department regarding COC 478-P/2023 in Writ Petition No.4587-P/2022 titled Syed Ijaz Ali Shah, Versus Government of Khyber Pakhtunkhwa and others, the case was thoroughly discussed and decided in the said meeting that the promotion Notification of petitioner, Syed Ijaz Ali Shah Office Superintendent, may be notified as Assistant Registrar (Academics) (BPS-17) on regular basis at Postgraduate Medical Institute, Hayatabad Peshawar.

NOW THEREFORE, In pursuance of the Judgment of Honorable Peshawar High Court, Peshawar Provincial Services Tribunal, Khyber Pakhtunkhwa and on the recommendation of the Khyber Pakhtunkhwa Provincial Inspection Team, (PIT) the undersigned has been pleased to grant promotion to the petitioner Syed Ijaz Ali Shah from Office Superintendent (BPS-17) Assistant Registrar (Academics) (BPS-17) with immediate effect in the light of (APT) Rules 1989 at Postgraduate Medical Institute, Hayatabad, Peshawar.

-----Sd-----

**SECRETARY TO GOVT: OF KHYBER
PAKHTUNKHWA
HEALTH DEPARTMENT**

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa
3. Chief Executive Officer, PGMI, Hayatabad, Peshawar.
4. Registrar Honorable Peshawar High Court, Peshawar.
5. PS to Secretary Health Department, Khyber Pakhtunkhwa.
6. PA to Deputy Secretary (Lit) Health Department, Khyber Pakhtunkhwa.
7. Section Officer, (Lit-I) Health Department, Khyber Pakhtunkhwa.
8. Officer Concerned.

(Muhammad Ibrahim)
SECTION OFFICER (E-VI)

139/16/24 (185)

Peshawar the 22nd April 2024

(51)

To
The Chief Secretary
Khyber Pakhtunkhwa
Peshawar

Secretary Health

2603
26/4/24

Through proper channel

Subject: Representation against notification dated 26.03.2024 for antedating my promotion w.e.f. 03.07.2001 in BPS-17 and proper fixation of pay along with arrears and all consequential benefits

Sir

I have the honor to say that my pending notification of promotion to the post of Assistant Registrar (Academics) Postgraduate Medical Institute (PGMI) Peshawar has been issued by the Secretary Health, Khyber Pakhtunkhwa Peshawar with immediate effect on 26.03.2024. I therefore submit this representation against notification mentioned ibid, qua it: retrospectivity, on following merits:-

Facts

1. That I was cleared for promotion to the post of Assistant Registrar (Academics) by the Departmental Promotion Committee (DPC) in its meeting held under the chairmanship of Secretary Health on 03.07.2001 but the Secretary, Health Department denied to issue my promotion notification at that time without showing any cogent reasons.
2. That feeling aggrieved of unfair treatment, I appealed to the KP Services Tribunal vide appeal no.706/2002. The KP Services Tribunal while disposing of the appeal being premature, directed the Secretary Health "to resolve the issue within three months" but no action was taken.
3. That feeling further aggrieved, I complained to the KP Chief Minister's Complaint Cell, which referred the case to the KP.PIT for inquiry, but in spite of clear recommendations of the KP (PIT) in its Inquiry Report of 09.04.2018, no action was taken. Though the Health Department sought advice of the KP Establishment Department and the Establishment Department vide letter dated 11.10.2018 advised that the recommendation of the KP.PIT may please be implemented. But regrettably, no action was taken.
4. That finally after exhausting all relevant channels, I approached to the Peshawar High Court (PHC) Peshawar vide Writ Petition No.4587/2022. The relevant part of judgment is reproduced hereunder, "In view thereof the instant writ petition stands disposed of with direction to respondent No.2 (Secretary Health) to decide the case of the petitioner qua promotion to his desired post through speaking order, within one month". However no action was taken within the stipulated time. (Annex. I)

- SSH (E&A)
- AS - ESTT
- AS - MT
- DS - Admin
- DS - Legal
- DS - ESTT

26/4/24
DS (Legal)

SO (E-VI)

26/4

Sd

5. That thereafter, a contempt of court case (COC No.478/2023) was lodged against respondent No.2. Resultantly, in compliance thereof, the Secretary Health KP Peshawar, issued my pending notification of promotion on 26.03.2024 but without pay fixation from 03.07.2001. (Annex. II)
6. That this fact has been mentioned in the order sheet of 08.04.2024, the relevant portion of which has been reproduced below, "Though the respondents have implemented the order of this Court by granting the promotion but the same has been granted with immediate effect, whereas recommendation of the petitioner for promotion as Assistant Registrar (Academics) by PIT was w.e.f. 03.07.2001.....he may be allowed to challenge the same before the appropriate forum through proper remedy.....the petitioner shall be at liberty to challenge the said order, dated 26.03.2024, qua its retrospectivity, before the appropriate forum". (Annex. III)

As advised, I am therefore challenging the notification of March 26, 2024 regarding its retrospectiveness in front of this honorable forum.

Grounds

- a) That I was cleared fit for promotion by the Health & Establishment Department, but was not promoted to the post of Assistant Registrar (Academics) Postgraduate Medical Institute (PGMI) in 2001.
- b) That the Health Department did not resolve my promotion case even after the directions of the KP Services Tribunal in 2006.
- c) That despite having fulfilled the criteria for being promoted to the post of Assistant Registrar (Academics) in 2001, I was not notified until 26.03.2024. Resultantly my constitutional rights under Article 18, 23 and 27 have been violated.
- d) That the Health Department vide Notification dated 26.03.2024, has mentioned the recommendation of the KP PIT that "as the case of Syed Iqbal Ali Shah was not resolved by the Health Department, therefore the same may be processed for consideration at the appropriate forum for promotion to the post of Assistant Registrar (Academics) with pay fixation w.e.f. 03.07.2001". However, in spite of admitting the facts (ibid), notifying my promotion with immediate effect without pay fixation from 03.07.2001 is clear violation of the recommendations of the KP PIT Inquiry Report of 09.04.2018 and the advice of the Establishment Department KP Dated 11.10.2018.
- e) That the Health Department in its meeting held on 23.11.2023 under the chairmanship of the Secretary Health KP Peshawar, recommended to issue my pending notification of promotion with immediate effect only and without pay fixation from 03.07.2001 while the crux of my longstanding case was both promotion & financial back benefits. Hence, it amounts to Promissory Estoppel.
- f) That the notification of 26.03.2024 is self-contradictory. In the second paragraph it narrates the lethargy of the Health Department which slept over my right for more than two decades. The Health Department failed to give justification as to why I was not promoted to the aforementioned post despite being recommended in first DPC meeting in 03.07.2001 and subsequently on 25.10.2001. On 06.12.2001, the Health


(53)

Department wrote letter to all DPC members that in case they agree with the clarification of the Establishment Department than the letter may be signed, so that notification could be issued. All DPC members agreed to it and signed the clarification. Even than then no action was taken.

- g) That prior to my recent promotion, I have already been working in BPS.16 as Office Superintendent/A.O since 01.01.2011, and since 20.05.2014 in BPS.17, by virtue of general upgradation granted to Office Superintendents by the Chief Minister KP. Hence promotion in same scale without retrospective benefits of pay fixation from 03.07.2001, makes no sense.
- h) That after DPC clearance, PIT Inquiry Report recommendations, Establishment Department advice, PHC Peshawar judgment of 21.06.2023 and more so, order (in the COC # 478/2023 in WP# 4587/2022) of 08.04.2024, it is my legitimate right to have been granted promotion to the post of Assistant Registrar (Academics) BPS.17 on regular basis with pay fixation from 03.07.2001. Neglecting my accrued rights mentioned above, is against the established principle of locus poenitentiae and legitimate expectation.
- i) That the honorable Supreme Court of Pakistan in many cases has held that promotion should always be granted from the date of availability of post and eligibility, which stood resolved by the DPC meeting of 03.07.2001, 25.10.2001 and letter of the Health Department Dated 06.12.2001 agreed to and signed by all DPC members. Hence, the promotion with immediate effect makes no sense nor could I be deprived of the benefits of retrospectivity. (23 SCMR 686, 23 SCMR 111, 23 PLC CS 636 22 SCMR 448).

Prayer

It is therefore humbly prayed that in view of the foregoing facts and grounds, the Secretary Health Department KP Peshawar may please be directed that impugned notification of 26.03.2024 issued by Health Department Peshawar in my favor, may please be corrected for antedating of my promotion from 03.07.2001 to the post of Assistant Registrar (Academics) BPS.17 on regular basis in PGMI Hayatabad Peshawar with pay fixation from 03.07.2001 along with arrears. All other retrospective consequential benefits may also be granted accordingly.


Syed Ijaz Ali Shah
Assistant Registrar (Academics)
Postgraduate Medical Institute
Hayatabad Phase I/ Peshawar
Contact: 03345498021

Copy in advance: Forwarded to all concerned offices for information and n/action please:

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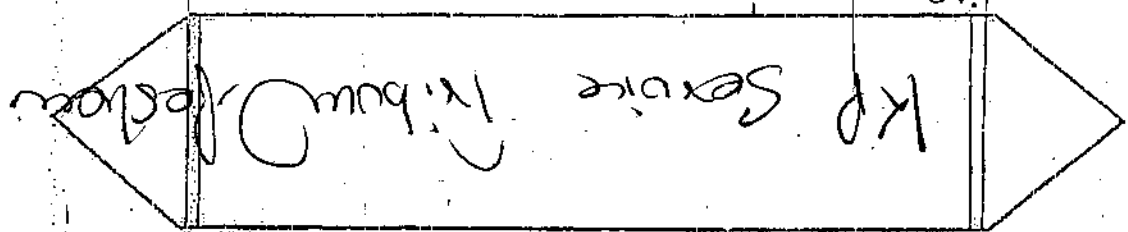
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