

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No.7292/2021

Date of presentation of Appeal.....06.08.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Muhammad Sadiq son of Muhammad Younis, Chowkidar Basic Health Unit, Gandhian, Tehsil and District Mansehra(***Appellant***)

Versus

1. **District Health Officer**, Mansehra.
2. **Director General Health Services** Khyber Pakhtunkhwa, Peshawar.
3. **Secretary Health** Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. **Muhammad Naeem** son of Muhammad Miskeen C/O DPCR Polio Control Room, Mansehra.
5. **Arif Hussain Shah** son of Syed Siddique Hussain Shah resident of District health Office, Mansehra.....(***Respondents***)

Service Appeal No.7293/2021

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Bilal Khan son of Khushal Khan, Naib Qasid, District Health Office, Mansehra.....(***Appellant***)

Versus

1. **District Health Officer**, Mansehra.
2. **Director General Health Services** Khyber Pakhtunkhwa, Peshawar.
3. **Secretary Health** Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. **Muhammad Naeem** son of Muhammad Miskeen C/O DPCR Polio Control Room, Mansehra.
5. **Arif Hussain Shah** son of Syed Siddique Hussain Shah resident of District health Office, Mansehra.....(***Respondents***)

Present:

Syed Babar Ali Shah, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney ...For official respondents
Mr. Abdul Saboor Khan, Advocate.....For private respondents



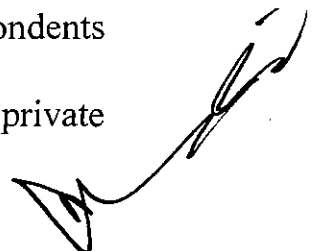
APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER NO.2361-65 DATED 23.04.2021 WHEREBY THE RESPONDENT NO.1 ILLEGALLY, UNLAWFULLY AND AGAINST THE RULES, REGULATIONS AND UNDER UNDUE PRESSURE, POLITICAL INVOLVEMENT AND BASED ON MALAFIDE AND PERSONAL GRUDGES AGAINST THE APPELLANTS, PROMOTED PRIVATE RESPONDENTS NO.4 & 5 TO THE POST OF JUNIOR CLERK (BPS-11) WHILE BYPASSING THE APPELLANTS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the cases as reflected from the record, are that the appellants were serving as Chowkidars in the respondent department for the last 25/26 years; that as per seniority list dated 09.08.2019 the appellants were allegedly senior to the private respondents, however, vide impugned order dated 23.04.2021, private respondents were promoted and the appellants were not; that feeling aggrieved, they filed departmental appeals on 05.05.2021 but the same were not responded, hence the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Official respondents put appearance and filed written replies while right of private

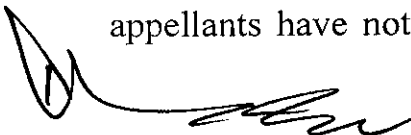


respondents was struck off due to non-submission of written replies/comments. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned Deputy District Attorney for official while learned counsel for the private respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney, assisted by the learned counsel for the private respondents, controverted the same by supporting the impugned order(s).

06. The case presents a scenario where the appellants, who have served as Chowkidars in the respondent department for approximately 25 to 26 years, claim seniority over the private respondents as indicated in the seniority list dated 09.08.2019. Despite their seniority, the appellants were not promoted in the order issued on 23.04.2021, which favored the private respondents. The appellants filed departmental appeals on 05.05.2021 to contest their non-promotion, but these appeals were not addressed by the department. This lack of response to the departmental appeals further solidifies the appellants' grievances, prompting them to seek resolution through the current service appeals. The official respondents, in their reply, contend that the appellants have not been granted promoted on the ground that



Service Appeal No.7292/2021 titled "Muhammad Sadiq Vs. District Health Officer, Mansehra, and others" and Service Appeal No.7293/2021 titled "Bilal Khan Vs. District Health Officer, Mansehra and others" decided on 26.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member (Executive) Khyber Pakhtunkhwa Service Tribunal, Peshawar, at Camp Court, Abbottabad.

they had no skill/experience over typing test and the said test/interviews were passed by the official respondents. It is pertinent to mention that there is no mandate of typing tests for promotion of a Class-IV to the post of Junior Clerk, in the rules, rather the said test is conducted for initial recruitment. The eligibility criteria for initial appointees have been mandated for promotees, is unjust and the said point had also not been countered by the respondents, as they have no justification in this regard.

07. In view of the above, the impugned order dated 23.04.2021 is set aside with the direction to the official respondents that Departmental Promotion Committee be held again and all the employees shall be considered for promotion in accordance with their seniority and fitness. Costs shall follow the event. Copy of this judgment be placed on file of connected appeal. Consign.

08. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah