

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1112/2024

Dr. Shah Faisal.....appellant

Versus

Govt: of Khyber Pakhtunkhwa and others Respondents

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S. bag Khan
Section Officer (Lit-II)
Government of Khyber Pakhtunkhwa,
Health Department

(1)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

SERVICE APPEAL NO. 1112/2024

Dr. Shah Faisal.....Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

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

Diary No. 16994

Dated 22-10-24

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENT 01 TO 03

Preliminary Objections:-

1. That the Appellant has got neither cause of action nor did 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 is liable to be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the instant Appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
8. That the instant appeal has been filed in utter violation of Section 4 of the Khyber Pakhtunkhwa service Tribunal Act 1974.
9. That the appeal is badly time barred.
10. That under Section 4 of the Khyber Pakhtunkhwa service Tribunal Act 1974, an appeal shall lie against a final order (original/appellate) however in the instant appeal provisional seniority list has been challenged hence instant appeal is not maintainable on this score alone. Reliance is placed on 2006 SCMR 1630.

ON FACTS:

1. Subject to proof. However it is worth to mention that the appellant was promoted to BS-18 and then to BS-19 on the basis of seniority ^{and} ~~some~~ fitness on his own turn.
2. Correct to the extent of formation of the management cadre Rules in the year 2008 which was notified in the year 2016. Furthermore the appellant did not annex or claims that when he opted for joining the management cadre.
3. Correct to the extent of notification dated 11/12/2008 and cases filed by Dr. Sher Khan and others it is worth to mention that the Apex Court vide judgment dated 03/11/2016 in CAs No. 320-324/2012 and CAs No. 126-P to 130-P/2013 dismissed the petitions however the Hon'ble Court has settled the seniority dispute of the incumbents of the management cadre in para-02 of the judgment which is reproduced as under;

“As regard the submission of learned ASC for the petitioners in Civil Appeals No.320-324 of 2012 he was unable to explain before us as to how the seniority of the petitioners will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting them seniority but that of allowing them to acquire qualification for opting in management cadre. If the respondents at all join management cadre, their seniority will be counted from the date of their joining in the management cadre and not from any earlier period which is also established principle that a person joining fresh cadre is relegated to the lowest position of that cadre. Thus there seems to be hardly any reason much less justifiable to interfere with the impugned judgment of the Tribunal more so, on the ground urged by the learned ASC for the petitioner”. (Annexure-A)

It is worth to mention that the notification dated 10/05/2017 was issued whereby rule 10 of the management cadre rules was amended to the extent that 02 years caution period was provided to those employees of the general cadres who were in service at the time of the formation of the Rules 2008 and opted for joining the management cadre however their MPH was not completed.

4. Correct to the extent of notification 10/05/2018, 10/09/2018 and 01/10/2018 however it is worth to mention that one Dr. Shams-ur-Rehman and others challenged the joining of the new incumbents of general cadre into management cadre in service appeals No830/2018 which were decided vide consolidated judgment dated 22/03/2019 (Annexure-B) wherein the Hon'ble Court has categorically held that the caution period of two years were given to those officers of the general cadre who were in service at the time of formation of the Rules 2008 and opted for joining the management cadre however their MPH was not completed. The judgment dated 22/03/2019 was up-held by the Apex Court.
5. Correct to the extent of notifying the provisional seniority list dated 01/01/2019 however it is worth mentioning that the issue of seniority has already been resolved as stated in the above paras furthermore the final seniority list of Members of Service BPS-19 (Management Cadre) has already been resolved that is why many seniors have already been promoted to BS 20 vide various Notifications however intentionally the petitioner concealed the material facts from the Honorable Tribunal.
6. Correct to the extent of amendment in the Khyber Pakhtunkhwa Management Cadre Rules 2008 which has been made by the replying respondents under Rule 3(2) Khyber Pakhtunkhwa Government Servant (appointment promotion & Transfer) Rules 1989.
7. Incorrect. The appellant was required to make submit objection on the tentative seniority list and then filed departmental appeal before the appellate forum. Furthermore no objection/departmental appeal has been filed by the appellant against the previous seniority lists issued by the respondents.
8. Correct to the extent of issuance of the provisional seniority list issued vide Notification dated 04/01/2024 wherein the appellant was placed on his due place as per the dictum laid down in the aforementioned judgments of the tribunal/Courts. It is worth mentioning that thereafter the replying respondents issued final seniority list of the members of service cadres BPS-19(Management Cadre) Vide Notification dated 20th June 2024 which was duly circulated however the petitioner did not filed a departmental appeal against the same nor did make impugned in the instant service appeal hence the instant appeal is not maintainable under section 4 of the Khyber Pakhtunkhwa service tribunal Act 1974.(copy of the final seniority list 20th June 2024 is annexure C)
9. Incorrect already replied in para 8 above.

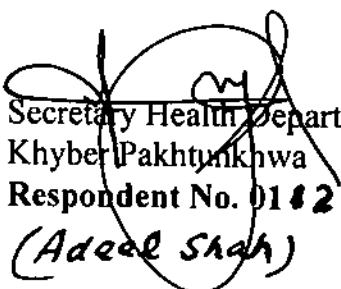
- 10. Incorrect already replied in para 8 above.(minutes of recent PSB)
- 11. Incorrect. The appellatant is not an aggrieved person as no vested right of the petitioner has been violated by the replying respondents


ON GROUNDS:


- A. Incorrect. The impugned provisional seniority list dated 04/01/2024 and thereafter final seniority list 20th June 2024 have been issued in accordance with law, rules and principles of natural justice in compliance with the judgments of the honorable Tribunal and Apex Court.
- B. Incorrect. Already replied in the preceding paras.
- C. Incorrect. Already replied in para 03 and 04 of the facts. Seniority of an incumbent of management cadre will be reckoned from the date of joining the management cadre. The petitioner has rightly been placed at proper place in the impugned seniority list.
- D. Incorrect already replied in para 2 above.
- E. Correct to the extent of provisional seniority list, In fact the petitioner himself admitted the fact that provisional seniority list cannot be questioned under the law however, he filed the instant appeal against a provisional seniority list despite the fact that final seniority list has been issued as discussed in the above paras and the promotion cases of the private respondents have been forwarded on the basis of final seniority list.
- F. Incorrect already replied in para A of the Grounds.
- G. Incorrect. The appellatant did not annex any supportive document which may support his stance.
- H. Incorrect. Already replied in para 03 and 04 of the Facts. Furthermore the facts of publishing the notification dated 02/11/2016 was in the knowledge of apex court however the court on 03/11/2016 clarified the seniority position of the management cadre therefore the ground in the para is baseless.
- I. Incorrect already replied in para A above.
- J. Incorrect already replied in para 10 of the facts.
- K. Incorrect. It is well settled principles of law that when seniority could not be challenged within the prescribed period under the law it's become final then it could not be questioned later on. The appellatant failed to challenge the previous seniority lists hence it got finality could not be questioned at this belated stage.
- L. Incorrect already replied in para-A above.
- M. The Replying respondents also seek prior permission from this Honorable Service Tribunal to adduce additional grounds at the time of arguments.

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.

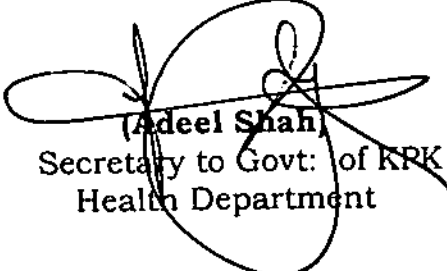

 Secretary Health Department,
 Khyber Pakhtunkhwa
 Respondent No. 0182.
 (Adeel Shah)


 Director General Health Services,
 Khyber Pakhtunkhwa.
 Respondent No. 03.
 (Dr Muhammad Saleem)

	<p>GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT</p>
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AUTHORITY LETTER

Mr. Shah Baz Khan, Section Officer (Litigation-II), Health Department Civil Secretariat Peshawar is hereby authorized to attend/defend the court cases and file comments on behalf of Secretary to Government of Khyber Pakhtunkhwa Health Department before the Service Tribunal and lower Courts.


(Adeel Shah)
Secretary to Govt: of KPK
Health Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO.1112/2024


Dr. Shah Faisal.....appellant

Versus

Govt: of Khyber Pakhtunkhwa and others Respondents

Affidavit

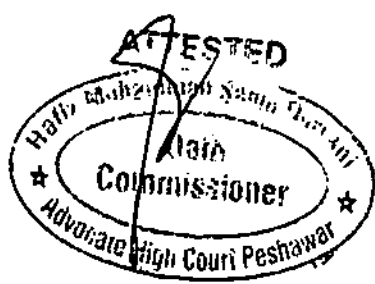
I Adeel Shah, Secretary to Govt of Khyber Pakhtunkhwa Health Department is hereby, solemnly affirmed on oath that the contents of the Parawise Comments in Service Appeal NO.1112/2024 on behalf of respondents are true and correct to the best of my knowledge and belief as per information provided and nothing has been concealed from this Honorable Court. *It is further stated on oath that in this appeal, the answering respondent neither has been pleased ex-parte nor their defence has been struck off/lost.*


Adeel Shah
Secretary to Govt: of Khyber Pakhtunkhwa,
Health Department

Identified by

20 OCT 2024

Add: Advocate General,
Khyber Pakhtunkhwa,
Service Tribunal.



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Annex A

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Umar Ata Bandial

C.As.No.320-324 of 2012

AND

C.As.No.126-P to 130-P of 2013

(On appeal against common judgment dated 03.01.2012
passed by the Khyber Pakhtunkhwa Service Tribunal,
Peshawar, in Appeals No.517-517 of 2010

Dr. Muhammad Saleem & others.
Government of KPK through Secretary
Health Department, Peshawar and others. (In C.As.No.320-324)
(In C.As.No.126-130-P)
Appellant (s)

VERSUS

Dr. Sher Muhammad & others.
Gul Akbar & others.
Dr. Wakil Muhammad & others.
Dr. Shaukat Ali & others.
Dr. Syed Mujahid Hussain & others. (In C.As.No.320 & 126-P)
(In C.Ad.No.321 & 127-P)
(In C.As.No.322 & 128-P)
(In C.As.No.323 & 129-P)
(In C.As.No.324 & 130-P)
Respondent (s)

For the Appellant (s) : Mr. Ijaz Anwar, ASC
(In C.As.No.320-324)
For the Appellant (s) : Mr. Waqar Ahmed Khan,
(In C.As.No.126-130-P) & for Government Addl. A.S.KPK
Respondents in C.As.No.320-324)
For Respondent No.1 : Mian Muhibullah Kakakhei, ASC
(In C.As.No.320-321)
For Respondent No.1 : Mr. Ishtiaq Ali Qari, ASC
(In C.As.No.126-130-P)
Date of Hearing : 03.11.2016

ORDER

GULZAR AHMED, J.— Civil Appeals No.320|to 324 of 2012 have been
filed by Dr. Muhammad Saleem & others while Civil Appeals No.126-P
to 130-P of 2013 have been filed by the Government of KPK against
one and single judgment dated 03.01.2012 of the Khyber
Pakhtunkhwa Service Tribunal, Peshawar. Learned ASC for the

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[Signature]
Court Associate
Supreme Court of Pakistan

attested
S. Ijaz Anwar
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

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appellants in Civil Appeals No.320 to 324 of 2012 has contended that if the judgment of the KPK Service Tribunal (Tribunal) is allowed to prevail, the appellants seniority is likely to be effected. On the other hand, learned Additional Advocate General, KPK appearing for the appellants in Civil Appeals No.126-P to 130-P of 2013 has contended that the Tribunal has exceeded its jurisdiction by enlarging the scope of Rule 10 of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 (Rules) as it did not make provision for providing cushion period for acquiring requisite qualification within two years for joining management cadre. It was noted that the Civil Appeals filed by the Government of Khyber Pakhtunkhwa (C.A.No.126-P for 196 days while C.A.Nos.127-P to 130-P for 203 days) were time barred and in the applications for condonation of delay common ground has been taken that filing of the appeals against the impugned judgment was delayed due to process of rendering opinion by the committee constituted in law department. It is obvious that this ground for condonation of delay in filing of a petition or appeal before this Court has never been accepted and the learned Additional Advocate General, KPK, himself was quite at pains to substantiate the ground of condonation of delay as pleaded in the application. The rule for condonation of delay is well established and there has to be sufficient ground with explanation of each day's delay. In the present case before us neither any sufficient ground is urged nor each day's delay has been explained. We are not persuaded to allow the applications for condonation of delay filed by the Government of KPK, therefore, all these applications are dismissed. Resultantly, Civil Appeals No.126-P to 130-P of 2013 are dismissed as time barred.

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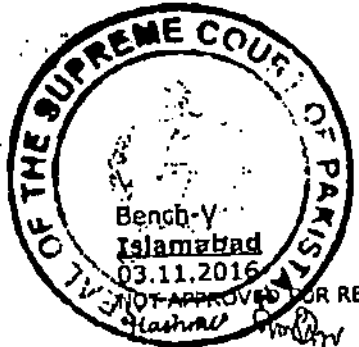
[Signature]
 Court Associate
 Supreme Court of Khyber Pakhtunkhwa

[Signature]
 Head of Department
 Health Services
 Khyber Pakhtunkhwa

2. As regard the submission of the learned ASC for the appellants in Civil Appeals No.320 to 324 of 2012 he was unable to explain before us as to how the seniority of the appellants will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting them seniority but that of allowing them to acquire qualification for opting in management cadre. If the respondents at all join Management Cadre, their seniority will be counted from the date of their joining in the Management Cadre and not from any earlier period which is also established principle that a person joining fresh cadre is relegated to the lowest position of that cadre. Thus, there seems to be hardly any reason muchless justifiable to Interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellants. The CIVIL Appeals No.320 to 324 of 2012 are, therefore, dismissed.

Sd/- Gulzar Ahmed, J
Sd/- Umar Ata Bandial, J

Certified to be True Copy



[Handwritten Signature]
15/11/16
Court Assistant
Supreme Court of Pakistan
Islamabad

attested
[Signature]
Secretary (Lit-1)
High Court
Khyber Pakhtunkhwa

GR No: 18879/16
 Date of issue: 03-11-16
 No of Volumes: 900
 No of Pages: 9
 Retention: 5.00
 Copy Fee: 5.58
 Court Fee: 10.58
 Date of issue: 15/11/16
 Date of delivery: 21/11/16
 Comparison by: [Signature]
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 830/2018

Date of Institution ... 22.06.2018

Date of Decision ... 22.03.2019



Dr. Shams Ur Rehman son of Zahir Gul, Officers of Health Service Management Cadre (BPS-17) Government of Khyber Pakhtunkhwa Peshawar. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others. ... (Respondents)

Present.

QAZI JAWAD EHSANULLAH,
Advocate.

... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney

... For official respondents.

MR. NOOR MUHAMMAD KHATTAK,
Advocate

... For private respondents
Nos. 3 to 90.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Attested
S. Bag Khan
Section Officer (Ist-II)
Health Department
Khyber Pakhtunkhwa

Instant judgment shall also dispose of the following appeals as common question of law and facts has been raised through all the appeals.

Besides, the grievance of appellants is also similar in nature:-

- (2) Appeal No. 831/2019 (Dr. Haris Mustaf Vs. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar and others.)
- (3) Appeal No. 832/2018 (Dr. S. Irfan Ali Shah Vs. -do-
- (4) Appeal No. 833/2018 (Dr. Inayat Ur Rahman Vs. -do-
- (5) Appeal No. 834/2018 (Dr. Farhad Iqbal Vs. -do-
- (6) Appeal No. 835/2018 (Dr. Kifayat Ullah Vs. -do-
- (7) Appeal No. 836/2018 (Dr. Attaullah Vs. -do-
- (8) Appeal No. 837/2018 (Dr. Liaqat Ali Vs. -do-
- (9) Appeal No. 838/2018 (Dr. Hamza Abbas Khan Vs. -do-
- ED Appeal No. 839/2018 (Dr. Mehreen Aziz Awan Vs. -do-

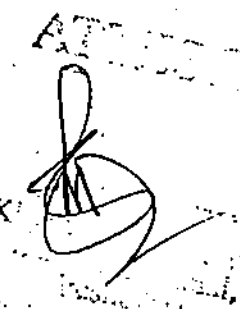
2. The averments noted in the memoranda of appeals are to the effect that the appellants are civil servants and members of the Health Services Management Cadre of the Government of Khyber Pakhtunkhwa created under the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, brought into effect on 11.12.2008. The appellants are aggrieved of the notification issued by Government of Khyber Pakhtunkhwa on 07.05.2018, whereby, respondents No. 3 to 90 have been absorbed in the Management Cadre of the Health Services by way of so many transfers from General Cadre in the Health Department of Government of Khyber Pakhtunkhwa. The appellants submitted departmental appeal against the impugned order/notification which was decided by the official respondents on 25.05.2018. The appeal was considered devoid of merits, therefore, was not acceded to hence the appellants have preferred the appeals in hand.

3. We have heard learned counsel for the appellants, learned counsel for private respondents No. 3 to 90 and learned Deputy District Attorney on behalf of respondents No. 1 and 2. Relevant record was also gone through with the valuable assistance of learned counsel for the parties.

It was contended by learned counsel for the appellants that the impugned notification dated 07.05.2018 was not only the result of misconception and illegality, it had also served as the back door entry for respondents No. 3 to 90. The respondents, at the time when the North-West Frontier Province Health (Management) Service Rules, 2008 were promulgated, had the requisite qualification under the rules but did not opt for their absorption in the Management Cadre. Similarly, some of them did not have the requisite qualification and acquired it later but not in the prescribed cushion period provided for the purpose through the amending notification dated 10.05.2017. It was also the argument of learned counsel that the absorption of the said respondents, through notification dated 07.05.2018, had practically and adversely affected the services of appellants in terms of seniority etc. Learned counsel in support of his arguments relied on judgment reported as 2013-SCMR-1752.

Learned counsel for private respondents, while controverting the arguments from other side, raised certain objections. He contended that the issue raised by appellant was not competent in view of Section 11 of CPC as well as Rule 3 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 as the proposition already stood decided by the court of competent jurisdiction. It was further objected that the departmental appeal was jointly filed by the appellants which was not allowable under Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. Learned counsel also raised the issue of limitation and stated that the appeals in hand were not preferred within the time prescribed for the purpose. He, however, withdrew from this objection when referred to the date of decision of departmental appeal as 25.5.2018 and filing of appeals in hand on 22.6.2018. It was also the argument of learned counsel for private respondents that the notification regarding promulgation of the North-West Frontier Province Health (Management) Service Rules, 2008

attested
S. BAZIKHAN
Secretary (Lit-II)
Health Department
Khyber Pakhtunkhwa





was published in the official gazette on 02.11.2016, therefore, the provisions of the rules were to be given effect from the said date. In his view the substance contained in Rule 10 thereof, whereby the officers of General Cadre were given option for absorption into Management Cadre, was to be enlarged to a term of two years from the said date in view of the amendments incorporated in the rules on 10.05.2017. The impugned notification dated 07.05.2018 and the amendment in the rules brought about on 10.05.2017 were not exceptionable, it was added.

Learned Deputy District Attorney concurred with the learned counsel for private respondents No. 3 to 90.

4. In order to recapitulate the facts relevant for the purpose of appeals in hand it shall be useful to trace the background of amendment brought about in the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008. The available record suggests that one Dr. Sher Muhammad preferred an appeal before this Tribunal on 22.2.2010, wherein, the notification regarding promulgation of Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 was questioned, inter-alia, on the ground that no chance/time period was provided therein for improvement of qualification of the appellant in order to qualify for absorption to the Management Cadre from General Cadre. His chances of further promotion were, therefore, denied through the rules. Rule 10 of the Rules 2008 originally read as follows:-

"10, One time exercise (1) Notwithstanding anything contained in the provisions of these rules, Government shall, as one time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning and Management or equivalent Master's Degree/Diploma

Attes Test
S. Baz Khan
 Section Officer (Lit-II)
 Health Department
 Khyber Pakhtunkhwa

in Health Management or allowed disciplines and opt for absorption:

Provided that the option once exercised shall be final:

(2) *Where the number of officers opting for absorption in Management Cadre is more than the available positions in respective grade, the selection under one time exercise shall be done on the basis of seniority-cum-merit only in the respective grade:*

Provided that for determining the suitability of the officers, additional relevant qualifications; training/courses in the relevant field and managerial experience, as such, shall be taken into consideration."

This Tribunal, while deciding the said appeal, observed that Rule 10 did not provide any cushion period and denied chances to improve qualification for joining the Management Cadre to the appellant. The same be modified to the extent that two years cushion period be allowed to all those who wished to improve qualification as per NWFP Health (Management) Service Rules and to join Management Cadre, if they succeeded in acquiring the requisite qualification. It was further noted that the decision, however, did not entitle the appellant and others not having the requisite qualification for posting in Management Cadre posts but only provided them a cushion period and if they acquired the requisite qualification within two years from the date of the decision they may opt and join Management Cadre without effecting their seniority/service. The notification dated 13.12.2008 was, therefore, modified and the appeal was disposed of. The matter was thereafter, taken before the August Supreme Court of Pakistan in Civil Appeals No. 320 – 334 of 2012 and Civil Appeals No. 126-P to 130-P of 2013. The said appeals were decided on 03.11.2016 and in the order the following was, inter-alia, noted by the apex court:-

Attested
S. Baghelwan
 Secret Officer (Lit-II)
 Health Department
 Khyber Pakhtunkhwa

"As regard the submission of the learned ASC for the appellants in Civil Appeals No. 320 to 324 of 2012 he was unable to explain before us as to how the seniority of the appellants will be effected by the impugned judgment of the Tribunal more so when the respondents claim before the Tribunal itself was not that of granting them seniority but that of allowing them to acquire qualification for opting in management cadre. If the respondents at all join Management Cadre, their seniority will be counted from the date of their joining in the Management Cadre and not from any earlier period which is also established principle that a period joining fresh cadre is relegated to the lowest position of that cadre. Thus, there seems to be hardly any reason muchless justinable to interfere with the impugned judgment of the Tribunal more so on the ground urged by the learned ASC for the appellants. The Civil Appeals No. 320 to 324 of 2012 are, therefore, dismissed."

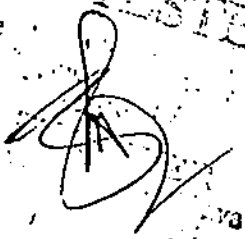
5. It appears that in pursuance to the judgments of this Tribunal as well as of the apex court an amendment was made in the rules of 2008, whereby, in sub-rule 2 of Rule 10 a second proviso was added. The amendment reads as follow:-

"Provided further that for a period of two years, from the date of issuance of this amending Notification, the officers of the General Cadre, who are in regular and continuous service and holding posts as such, shall be required to improve their qualification as per the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008 to exercise the option under this rule."

The impugned notification dated 07.05.2018 made a reference to modified Rule 10 and also the judgments of this Tribunal and of the apex court noted here-in-above.

6. The grievance of appellants is, inter-alia, in terms that under the garb of amendment to the rules the respondents No. 3, 6, 11, 16, 23, 28, 42, 44, 47, 48, 83,

ATTESTED



attested

S. Baykhan
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

88 and 89 were provided back door entry and that they were already in possession of the requisite qualification when the rules were enforced in the year, 2008, however, did not opt for absorption due to reasons best known to them. The said averments in Para-8 of the memoranda of appeals were denied as misconceived through reply by respondents No. 3 to 90. Their denial appears to be evasive as being short of specific counter statement of facts. In essence, the grievance of appellants, as laid in the memoranda of appeals, is against the said respondents.

7. The fore-noted history of matter relevant for decision of appeals in hand suggests that the Health (Management) Service Rules 2008 were never declared ultra-vires by any court of law and duly held the field from date of inception. In pursuance to the rules, the appellants were appointed/absorbed in the Management Service. The issue, on the other hand, seems to have arisen after amendment in Rule 10 in view of judgments of this Tribunal and that of apex court when the same was misinterpreted and misapplied in order to provide cushion period of two years to those officials who were duly qualified for absorption into the Management Cadre under Rule 10 of N.W.F.P Health (Management) Service Rules, 2008 read with Schedule-I thereto. By virtue of amendment dated 10.05.2017, only the officers of the General Cadre who were in regular and continuous service, were provided opportunity to improve their qualification as required by the Rules of 2008 in order to exercise the option under the rules. By no stretch of imagination, the amendment ever meant to include the officers who were qualified enough for their absorption into the Management cadre after the promulgation of the rules in 2008 but did not opt for the purpose. The language of Rule 10 itself suggested that it was a onetime exercise to fill in the posts in the Management Cadre from amongst the officers of General Cadre. Through such provisions the scope of Rule was enlarged to include the officers who could improve their qualification in

ATTESTED

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attested
S. B. Khan

Section Officer
Health Department
Khyber Pakhtunkhwa

order to match the requirements contained in the rules within a period of two years and not otherwise. In such view of the matter, it can safely be held that the respondents who fell into the category of officers having prescribed qualification at the relevant time but failed to opt for their absorption into the management cadre before the coming into force of amended rules on 20.05.2017, were not eligible for the purpose of absorption subsequent to the amendment in the rules.

8. As a result of the above discussion, the appeals in hand are allowed to the effect noted herein above.


The parties are left to bear their respective costs. File be consigned to the record room.


 (AHMAD HASSAN)
 MEMBER


 (HAMID FAROOQ DURRANI)
 CHAIRMAN

ANNOUNCED
 22.03.2019

Date of Presentation 27-3-19
 Number of 3600
 Copies 20-00
 Uprated _____
 Total 90-00
 Name of _____
 Date of _____ 02-05-19
 Date of Delivery of _____ 02-05-19


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 Registrar

Attested:
 S. Bag Khan
 Section Officer (Lit-II)
 Health Department
 Khyber Pakhtunkhwa

REGISTRAR 28/3/19

(17)

Annex - 4



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar the 20th June, 2024

NOTIFICATION

No.SOH(E-V)/4-4/2024/5276

In pursuance of Section-8 (i) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rules 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Competent Authority (Chief Secretary) is pleased to notify Final Seniority list of Member of Service BPS-19 of Health Department, Khyber Pakhtunkhwa as stood on 01.01.2024.

Total Sanctioned post= 168

Total Vacant posts= 127

S.No	Name of Officer	Qualification	Date of Birth and Domicile	Date of 1 st entry into Govt: service	Regular appointment/Promotion to the present post.			Present posting
					Date	BPS	Method of Rectt:/Apptt:	
1	2	3	4	5	6	7	8	9
1.	Dr.Shahzad Ali Khan s/o Muhammad Farid Swati.	MBBS, MPH	10.02.1966 Mansehra	09.12.1991 /BS-17	i)10.09.2009 ii)21.10.2013	BS-18 BS-19	By Promotion BY Promotion	MS,THQH Takhtbai Mardan.

attested
Secretary
Health Department
Khyber Pakhtunkhwa

Section Officer (E-V)
Health Department
Govt. of Khyber Pakhtunkhwa

(13)

2.	Dr. Shahzad Faisal s/o Asmatullah.	MBBS, MPH	16.3.1969 / Peshawar	27.11.1998 /BS-17	i)28.02.2017 ii)01.10.2018 iii)21.12.2022	BS-18 BS-19 BS-20	By Promotion By Promotion. By Promotion	HD HMC Peshawar (On A.C.B)
3.	Dr. Syed Nasir Shah S/O Syed Akhtar Shah,	MBBS/DHPM /MPH	01.10.1964 / Kohat	27.11.1998 /BS-17	i)14.11.2017 ii) 4.01.2019 iii)21.12.2022	BS-18 BS-19 BS-20	By Promotion BY Promotion By Promotion	DHO Haripur. (On A.C.B)
4.	Dr. Naeem Shah S/O Saeed Shah,	MBBS, M.Sc (INT-PH)	05.04.1970 / Kohat.	16-09-2000 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	DHQH Kohat
5.	Dr. Muhammad Shuaib Khan S/O Muhammad Saeed,	MBBS, MPH	03.11.1969 / Karak	16-09-2000 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	Waiting for posting.
6.	Dr. Siraj Muhammad S/O Khaista Muhammad.	MBBS, MPH	15.02.1968 / Mardan.	16-09-2000 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	ADG (Admn:) DGHS Peshawar.
7.	Dr. Abdul Qaddus S/O Abdul Karim.	DHPM, MPH	15.12.1969 / Khyber	16-09-2000 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	MS Cat-D Hosp: Kaka Sahib Nowshera
8.	Dr. Ahmad Faisal S/O Muhammad Safdar.	MBBS, MPH	16.10.1971 / Abbottabad.	16-09-2000 /BS-17	28.02.2017 01.10.2018	BS-18 BS-19	By Promotion By Promotion	MS Typ-D Hosp: Serai Niamat Khan Haripur.
9.	Dr. Ikhtiar Ali S/O Pio Ali.	MBBS, DHPM, MPH	04.02.1966 / Orakzai	01.07.2001 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	MS, ESH Pabbi Nowshera

Attested
S. bag Khan
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10.	Dr. Niaz Muhammad Afridi S/O Shamshad Khan Afridi.	MBBS, DHPM, MPH	03.04.196 7/ Khyber	01.07.2001 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	PHSA Peshawar
11.	Dr. Muhammad Qasim s/o Aqal Khan,	MBBS, MPH	20.01.196 9/ Khyber	01.07.2001 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	N STOP Peshawar
12.	Dr. Sadiq Shah S/O Said Badshah, ,	MBBS, MPH	07.10.196 9/ Khyber	01.07.2001 /BS-17	22.09.2014 26.09.2017	BS-18 BS-19	By Promotion By Promotion	DHO Malakand
13.	Dr. Syed Muhammad Idrees S/O Syed Bakht Badshah.	MBBS, MPH	08.02.197 1/ Bajaur	01.07.2001 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	DHO Peshawar
14.	Dr. Wali Khan S/O Sewal Khan,	MBBS, DHPM, MPH	30.03.196 6/ Khyber	01.07.2001 /BS-17	22.09.2014 26.09.2017	BS-18 BS-19	By Promotion By Promotion	DGHS Office
15.	Dr. Anisa Afridi D/O Muhammad Anwar Afridi, .	MBBS, MPH/ MSc Intern; Health DGO	24.08.196 9 / Khyber	01.07.2001 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	Provincial Coordinator MNCH Program NMD
16.	Dr. Muhammad Naeem Awan S/O Muhammad Bashi.	MBBS, M.Sc Internationa l Health	22.02.197 4 / Mansehra	04.07.2002 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	MS, Mental Hospital, Dadar Mansehra
17.	Dr. Muhammad Akram Shah s/o Suleman Shah.	MBBS, Dip: in Public Health & Hospital Admn:	20.4.1972 / Nowshera	04.07.2002 /BS-17	29.10.2013 26.09.2017	BS-18 BS-19	By Promotion By Promotion	MS, Molvi Jee Hospital, Peshawar

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18.	Dr.Azmatullah Khan s/o Nasrullah Khan.	MBBS, MPH, MBA	26.7.1972 / Peshawar	23.07.2005 /BS-17	29.10.2013 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	Health Foundation KP
19.	Dr. Sher Khan Afridi S/O Muhammad Akram Khan,	MBBS, MPH	01.04.1973 / Khyber	23.07.2005 /BS-17	29.10.2013 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	DHO Tank
20.	Dr.Ikramullah Khan s/o Hidayatullah Khan,	MBBS, MPH	20.11.1973 / Peshawar	23.07.2005 /BS-17	22.09.2014 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	PD,HCRP/PD Revamping
21.	Dr.Tariq s/o Fazli Raziq,	MBBS, MPH	20.03.1969 / Swat	23.07.2005 /BS-17	22.09.2014 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	MS,KATH Mansehra
22.	Dr.Asghar Khan s/o Mohabat Khan,	MBBS, DHPM, MPH	14.04.1973 / Swabi	23.07.2005 /BS-17	22.09.2014 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	N.STOP Nowshera
23.	Dr.Jehanzeb Khan s/o Ihsanullah Khan	MBBS, MPH	1.1.1965 / Swabi	14.04.1992 /BS-17	06.04.2015 / 14.11.2017	BS-18 / BS-19	By Promotion / By Promotion	Attached to DHO Peshawar
24.	Dr.Kalimullah Khan s/o Eid Gul ,	MBBS, MPH	27.03.1965 / Karak	15.09.1997 /BS-17	06.04.2015 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	Waiting for posting
25.	Dr.Abdul Waheed Khan S/O Abdul Hamid Khan,	MBBS, MPH	3.11.1968 / FR Tank	15.09.1997 /BS-17	06.04.2015 / 14.11.2017	BS-18 / BS-19	By Promotion / By Promotion.	Attached to DHO Peshawar
26.	Dr.Shahab Ahmad s/o Abdul Rehman.	MBBS, MPH	24.4.1968 / Charsadda	27.11.1998 /BS-17	06.04.2015 / 14.11.2017	BS-18 / BS-19	By Promotion / By Promotion.	KATH Mansehra
27.	Dr.Tariq Khan s/o Rasool Khan.	MBBS, MPH	16.10.1964 / Swat	31.07.1993 /BS-17	06.04.2015 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion	SGTH Swat
28.	Dr.Waseem Ahmad s/o Qazi Muhammad Saleem	MBBS, MPH	8.6.1966 / Mansehra	31.07.1993 /BS-17	06.04.2015 / 26.09.2017	BS-18 / BS-19	By Promotion / By Promotion.	DDHQ Mansehra

Atasheed
 Head of Department
 Khyber Pakhtunkhwa

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29.	Dr. Mian Habibur Rehman s/o Fazlur Rehman.	MBBS, MPH	4.4.1966/ Mardan	15.09.1997 /BS-17	06.04.2015 14.11.2017	BS-18 BS-19	By Promotion By Promotion.	PMO, DHQH, Mardan
30.	Dr. Shah Faisal s/o Ronaq Zaman Khanzada,	MBBS, MPH	27.5.1967 / Swabi	15.09.1997 /BS-17	06.04.2015 14.11.2017	BS-18 BS-19	By Promotion By Promotion.	DHO, Abbottabad
31.	Dr. Khan Bahadar s/o Gul Akbar,	MBBS, MPH, MSc (Ecom) MSc(CC, DMR D (Radio)	02.02.196 8/ Kurram	27.11.1998 /BS-17	06.04.2015 14.11.2017	BS-18 BS-19	By Promotion By Promotion	Waiting for posting
32.	Dr. Shahzada Muhammad Haiderul Mulk s/o Shahzada Muhd Mutaul Mulk,	MBBS, MPH	1.4.1968/ Chitral	27.11.1998 /BS-17	06.04.2015 26.09.2017	BS-18 BS-19	By Promotion By Promotion.	MS, DHQH Chitral.
33.	Dr. Muhammad Khalil Akhtar s/o Muhammad Yousaf Khan.	MBBS, MPH	25.3.1965 / DI Khan	27.11.1998	15.11.2017 25.01.2021	BS-18 BS-19	By Promotion	Chief HSRU
34.	Dr. Muhammad Saddiq S/O Muhammad Anis.	MBBS, MPH	02-10- 67/ Mansehra	11.03.1999	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	Mental & General Hosp Dadar, Mansehra
35.	Dr. Syed Ijaz Ali Shah S/O Syed Abdul Qayyum Shah,	MBBS, MPH	09.05.197 3/ Mansehra	16-09- 2000	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	Director IMU KP
36.	Dr. Muhammad Riaz Tanoli S/O Said Ozar.	MBBS, MPH	01.04.197 0/ Swabi	16-09- 2000	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	PD SHPI, Peshawar
37.	Dr. Wasi Ullah S/O Shakir Ullah.	MBBS, MPH	10.01.197 1/ Charsadda	16-09- 2000	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	MS, THQH Tangi Charsadda
38.	Dr. Syed Gul Syed Hussain S/O Syed Shah Jehan	MBBS, MPH	07.04.197 0/ 07.04.197	16-09- 2000	15.11.2017 25.01.2021	BS-18 BS-19	By Promotion	DMS, LMH, Kohat

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Khyber Pakhtunkhwa

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Health Department
Govt. of Khyber Pakhtunkhwa


	Hussain.		Orakzai					
39.	Dr. Daud Khan S/O Muhammad Rahim Khan.	MBBS, MPH	03.04.196 8/ Dir	16-09- 2000	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	MS, THQH Dargai Malakand.
40.	Dr. Jamil Ahmad S/O Abdullah,	MD/MPH	24.04.196 7/ Swat	01.07.2001	15.11.2017 25.01.2021	BS-18 BS-19	By Promotion	DHO Torghar.
41.	Dr. Niaz Muhammad S/O Dost Muhammad,	MBBS, MPH	17.04.196 9/ Charsadda	01.07.2001	26.09.2017 25.01.2021	BS-18 BS-19	By Promotion	MS Services Hospital, Pesh

**SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA**

No. _____ / Notification of even No. & dated:

Copies forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa.
3. Director General, Provincial Health Services Academy, Peshawar.
4. All concerned Chief Executive Officers of Teaching Hospitals in Khyber Pakhtunkhwa.
5. All concerned Medical/ Hospital Directors of MTIs in Khyber Pakhtunkhwa.
6. All concerned Medical Superintendents in Khyber Pakhtunkhwa.
7. All concerned District Health Officers in Khyber Pakhtunkhwa.
8. All concerned Principals/ Deans, Khyber Pakhtunkhwa.
9. All concerned District Accounts Officers in Khyber Pakhtunkhwa.
10. PS to Secretary Health Department Khyber Pakhtunkhwa.
11. Deputy Director (IT), Health Department, Peshawar.
12. Doctor concerned.
13. Personal file of the doctor concerned.


(FAZAL AMIN)
SECTION OFFICER (E-V)
Section Officer (E-V)
Health Department
Govt. of Khyber Pakhtunkhwa

Attested
Sabir Khan
Section Officer (E-V)
Health Department
Khyber Pakhtunkhwa

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25/6/24
Time 3:44