

Service Appeal No.1567/2022 titled "Hazrat Ali Versus Director General, Health Service, Khyber Pakhtunkhwa and one other decided on 23.10.2024 Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mr. Muhammad Akbar Khan Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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

Service Appeal No. 1567/2022

Date of Institution..... 03.11.2022
Date of Hearing..... 23.10.2024
Date of Decision..... 23.10.2024

Hazrat Ali S/O Jan Muhammad (Sanitary Petrol) BPS-4 District Health Office,
District Charsadda..... (*Appellant*)

Versus

1. Director General Health Service, Khyber Pakhtunkhwa, Warsak Road
Peshawar.
2. The District Health Officer, District Charsadda.....(*Respondents*)

Present

MOHAMMAD MAAZ MADANI,
Advocate

...

For appellant

NASEER-UD-DIN SHAH,
Assistant Advocate General

...

For respondents


**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ
WITH ALL ENABLING LAWS & RULES AGAINST THE ACT
& OMISSION OF THE RESPONDENT NO. 2 BY NOT ISSUING
PROMOTION ORDER TO THE APPELLANT AGAINST THE
POST OF JUNIOR CLERK (BPS-11) IRRESPECTIVE OF THE
FACT THAT THE APPELLANT HAS PROPERLY BEEN
RECOMMENDED BY THE DEPARTMENTAL PROMOTION
COMMITTEE CONDUCTED 11.06.2019.**



JUDGEMENT

KALIM ARSHAD KHAN, CHAIRMAN:- Brief facts of the case are that the appellant was appointed as Cook (BPS-01) vide order dated 23.04.1996; that the post of the appellant (Cook) was abolished in the office of respondent No. 2 and the appellant was adjusted against the post of Chowkidar, vide order dated 01.07.2002; that during service, the appellant improved his qualification by passing intermediate in the year 2013; that Departmental Promotion Committee was held on 11.06.2019 and the appellant successfully passed the Typing Test with the speed of 43 W.P.M as the required speed is 30 W.P.M for promotion to the post of Junior Clerk (BPS-11); that minutes of the DPC meeting were issued wherein it was recommended that one class-IV would be promoted to the post of Junior Clerk (BPS-11) and as per merit list only the appellant became eligible for promotion but the respondent department issued three appointment orders of the other candidate on 11.09.2019 while the promotion Notification/order of the appellant to the post of Junior Clerk (BPS-11) was not issued without showing any plausible reason. Feeling aggrieved the appellant approached to the Honourable Peshawar High Court, Peshawar through Writ Petition No. 5282-P/2019 which was dismissed vide judgment dated 29.02.2022, hence preferred the instant service appeal on 03.11.2022.

02. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.



03. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned, Assistant Advocate General controverted the same by supporting the comments submitted by the respondents.

04. Perusal of record reveals that the appellant was appointed as Cook (BPS-01) vide order dated 23.04.1996. The said post was abolished in the office of respondent No. 2 and the appellant was adjusted against the post of Chowkidar vide order dated 01.07.2002. The appellant has annexed in his appeal the list of Class-IV employees for promotion to junior clerk under 33% quota District Health Office Charsadda dated 11th June, 2019 where the appellant was shown as eligible and he was at serial No. 1 of the said list. However, perusal of the said list reveals that Dr. Muhammad Fayyaz, District Health Officer, Charsadda (Chairman of the DPC) did not sign the same as well as minutes of the DPC. Leaned counsel for the appellant relied on the minutes of the DPC meeting that being top on the merit list of Class-IV employees he ought to have been promoted to the post of Junior Clerk. Admittedly, the process of DPC was not completed and was declared null and void. Since nobody has been promoted against the post claimed by the appellant in this appeal, therefore, the appellant does not have any cause of action. Moreover, the appellant has approached this Tribunal without challenging any original or appellate order, as there is no order on file indicating the appellant's grievance. Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, mandates that an appeal



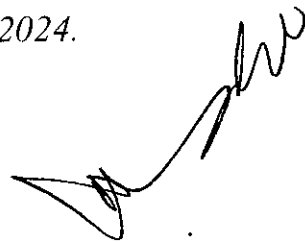
must be filed against a specific order. Section-4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 is reproduced as below:-

Appeal to Tribunal.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him.

05. The appellant's case does not fall within the ambit of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, as he has approached this Tribunal without challenging any original or appellate order. Section 4 explicitly states that an appeal must be filed against a specific order, which is absent in this case. The Tribunal's jurisdiction is limited to appeals filed against specific final orders, which is missing in the instant appeal.

06. In view of the above, the appeal in hand is dismissed. Costs shall follow the event. Consign.

07. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.



(KALIM ARSHAD KHAN)
Chairman





(MUHAMMAD AKBAR KHAN)
Member (E)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1567/2022

Hazrat Ali versus Director General Health Services, Khyber Pakhtunkhwa, Warsak Road Peshawar and two others

S. No. of Order & Date of Proceedings	Order or other proceedings with signature of Chairman/Member (s)/Registrar and that of parties or counsel where necessary
<p><u>Order-14</u> 23rd Oct, 2024</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Maaz Madni, Advocate on behalf of the appellant present.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.3. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.4. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.</i> <p style="text-align: right;"> (KALIM ARSHAD KHAN) Chairman</p> <p style="text-align: right;"> (MUHAMMAD AKBAR KHAN) Member (E)</p> <p>*Kamranullah*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1567/2022

Date of Institution..... 03.11.2022
Date of Hearing..... 23.10.2024
Date of Decision..... 23.10.2024

Hazrat Ali S/O Jan Muhammad (Sanitary Petrol) BPS-4 District Health Office,
District Charsadda..... (*Appellant*)

Versus

1. Director General Health Service, Khyber Pakhtunkhwa, Warsak Road Peshawar.
2. The District Health Officer, District Charsadda.....(*Respondents*)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH ALL ENABLING LAWS & RULES AGAINST THE ACT & OMISSION OF THE RESPONDENT NO. 2 BY NOT ISSUING PROMOTION ORDER TO THE APPELLANT AGAINST THE POST OF JUNIOR CLERK (BPS-11) IRRESPECTIVE OF THE FACT THAT THE APPELLANT HAS PROPERLY BEEN RECOMMENDED BY THE DEPARTMENTAL PROMOTION COMMITTEE CONDUCTED 11.06.2019.

PRESENT


Mr. Muhammad Maaz Madni, Advocate for the for the appellant present.
Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	3. Pleader's fee	Rs. Nil
4. Security Fee	Rs. Nil	5. Security Fee	Rs. Nil
6. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
7. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. Nil	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under my hand and the seal of this Court, this 23rd day of October 2024.

(Muhammad Akbar Khan)
Member (E)


Kalim Arshad Khan
Chairman