

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1559/2022

Date of presentation of Appeal 19.10.2022
Date of hearing 15.11.2024
Date of Decision 15.11.2024

Malik Tahir Awan, Senior Clinical/PHC Technologist BPS-18, Police Service Hospital, Peshawar.Appellant

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Civil Secretariat, Peshawar.
4. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Mr. Javed Khan S/o Pinda Khan, DHO Khyber and 20 others private respondents.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ALLOWING/GRANTING BPS-11 TO THE APPELLANT W.E.F. 29.10.1988 AND ACCORDINGLY NOT CORRECTING HIS SENIORITY AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.


PRESENT

1. Mr. Noor Muhammad Khattak, Advocate.....For appellant.
2. Mr. Muhammad Jan, District AttorneyFor official respondents.

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	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

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

Given under our hands and the seal of this Court, this 15th day of November 2024.


Aurangzeb Khattak
Member (Judicial)


Kalim Arshad Khan
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

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JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN:- The facts of the case as narrated by the appellant in his appeal are that, he was appointed as a Fluorescein Angiography Technician in BPS-9 at Lady Reading Hospital (LRH), Peshawar, on October 29, 1988. Another individual,

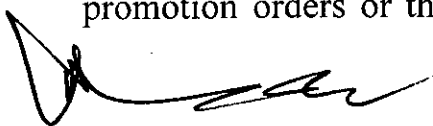
Mr. Gulab Shah, with similar qualifications, was appointed as a Fluorescein Angiography Technician in BPS-11 at Khyber Teaching Hospital (KTH), Peshawar, on September 24, 1990. In 1998, the appellant filed departmental representation, seeking up-gradation to BPS-11, which was not responded. Over the years, several junior colleagues, including Mr. Gulab Shah, were promoted to higher grades (BPS-14 in 2010 and BPS-17 in 2012). The appellant made further representations in 2012, 2013 and 2020, requesting retrospective adjustment of his pay scale to BPS-11 from his appointment date and seniority corrections, however the same were not responded. The appellant was promoted to BPS-16 in 2012, BPS-17 in 2017 and BPS-18 in 2021. The joint seniority list issued in November 2020 placed him below junior colleagues. Finally, on 05.07.2022, the appellant again filed departmental appeal, which was too not responded, hence he approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections.

3. The learned counsel for the appellant contended that the appellant was entitled to appointment in BPS-11 from the outset, as his qualifications and job responsibilities were identical to that of Mr. Gulab Shah, who was appointed in BPS-11. He next contended that various communications and service rules reflect that the post of

Fluorescein Angiography Technician is categorized as BPS-11. He further contended that the failure to adjust the appellant's pay scale and seniority violated Section 8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, Rule 17 of the Khyber Pakhtunkhwa APT Rules, 1989 and Article 25 of the Constitution, which guarantees equality before the law. He next contended that the respondents acted arbitrarily and in bad faith by denying the appellant's requests for up-gradation and seniority rectification. In the last, he argued that the appellant might be allowed/granted BPS-11 w.e.f. 29.10.1988 with all back benefits including seniority and promotion.

4. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant accepted his initial appointment in BPS-9 without objection and failed to pursue his grievances in a timely manner. He next contended that the appellant's post in LRH was distinct from the post held by Mr. Gulab Shah in KTH, which is a separate entity. He further contended that the appellant's departmental appeal was filed in 1998, nearly a decade after his appointment and is thus time-barred. He also contended that the post of Fluorescein Angiography Technician in BPS-9 has been amalgamated into the cadre of Junior Cardiology Technicians in BPS-9 under the service structure notified in 2006. He next argued that the appellant had availed multiple promotions through approved service rules, reaching BPS-18 and has never challenged his promotion orders or the seniority list before the appropriate forums.



He further argued that the appellant's repeated representations violate Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, which limits the filing of appeals to one instance.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of case file shows that the appellant was appointed as Fluorescein Angiography Technician in BPS-09 at Lady Reading Hospital (LRH), Peshawar in 1988 and he accepted the post without raising any objection. This indicates his acquiescence to the terms of appointment at that time. His subsequent departmental appeal, filed in 1998, seeking up-gradation to BPS-11, comes after an undue delay of a decade. The failure to raise objections within a reasonable timeframe as per Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 undermines the credibility of his claim. The appointment of Mr. Gulab Shah at Khyber Teaching Hospital (KTH) as per his appointment order so annexed by the appellant alongwith his appeal, has nowhere mentioned any scale, which could show that Mr. Gulab Shah was appointed in BPS-11. The appellant's reliance on parity with Mr. Gulab Shah is misplaced, as the appointments were made independently by different institutions. Furthermore, no evidence has been provided to substantiate that both posts were governed under identical terms or that a common policy applied to their appointments. It is evident from the record that the post of Fluorescein Angiography Technician in BPS-09 was amalgamated into the cadre of ECG Technician and re-designated as

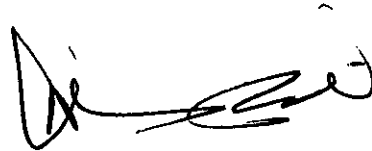
Junior Cardiology Technician (JCT) in BPS-09 through notification dated August 25, 2006. This re-designation aligns with the approved paramedic service structure. The appellant's request for up-gradation to BPS-11 retroactively is inconsistent with the service restructuring policy and does not hold merit in light of notification dated August 25, 2006. The appellant has been promoted successively to BPS-12, BPS-14, BPS-16, BPS-17 and finally BPS-18 as Senior Clinical Technologist Ophthalmology. These promotions, based on the approved service structure, demonstrate that he has already been granted due progression in his cadre. The appellant has not challenged any of the promotion orders or seniority lists before the proper forums, thereby acquiescing to his placement in the seniority hierarchy. The relief sought by the appellant primarily pertains to up-gradation, which does not fall within the jurisdiction of this Tribunal. This Tribunal is specifically tasked with adjudicating disputes related to the terms and conditions of service of civil servants. The appellant's repeated representations to the department contravene the procedural requirements of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The process of seeking remedies should comply with the procedural norms established by section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. This section typically outlines the procedural framework for filing appeals or grievances before this tribunal and adherence to it is crucial for this tribunal to entertain a case. The appellant's actions did not align with these procedural requirements, undermining the legitimacy of his claim. The findings also underline the distinction between administrative remedies available within the




framework of governmental departments and legal remedies available through judicial or quasi-judicial bodies like the Service Tribunal.

7. Consequently, the appellant's claim for retrospective adjustment to BPS-11 and corresponding seniority rectification is devoid of merit. The appeal is also time-barred, procedurally defective and beyond the jurisdiction of this Tribunal. Accordingly, the appeal in hand stands dismissed with costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of November, 2024.*



KALIM ARSHAD KHAN
Chairman





AURANGZEB KHATTAK 15/11/2024
Member (Judicial)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1559 of 2022

Malik Tahir Awan versus The Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar and others.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-15 15th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Noor Muhammad Khattak, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney, on behalf of official respondents.3. Arguments heard and record perused.4. Vide our detailed judgment of today placed on file, the appellant's claim for retrospective adjustment to BPS-11 and corresponding seniority rectification is devoid of merit. The appeal is also time-barred, procedurally defective and beyond the jurisdiction of this Tribunal. Accordingly, the appeal in hand stands dismissed with costs. File be consigned to the record room.5. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of November, 2024.</i> <p style="text-align: center;"> (Aurangzeb Khattak) Member (Judicial) 15/11/2024</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Naeem Amin*</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

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S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-14 01st November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Rehan Khattak, Advocate junior to Mr. Noor Muhammad Khattak, Advocate on behalf of appellant.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General, on behalf of official respondents. <p>Junior counsel for the appellant seeks adjournment on the grounds that the senior counsel is unavailable due to some domestic issues in the village. Adjourned. To come up for arguments on 15/11/2024 before D.B at the Principal Seat, Peshawar. <i>Parcha Peshi</i> given to the parties.</p> <p>(Fareeha Paul) Member (Executive)</p> <p>(Aurangzeb Khattak) Member (Judicial)</p> <p><i>*Naeem Amin*</i></p>

NED
KPST
Peshawar