

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7946/2021

Date of presentation of Appeal.....29.12.2021
Date of Hearing.....08.10.2024
Date of Decision.....08.10.2024

Ghulam Fareed Chowkidar BHU Gandhi Umer Khan District
D.I.Khan. **Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. District Officer Health D.I.Khan.

.....(Respondents)

Present:

Mr. Muhammad Anwar Awan, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the case as narrated by the appellant in his memorandum of the appeal are that, he was appointed as a Chowkidar on 01-11-2004 in the respondent-department and later on acquired a certificate in EPI Training. He was adjusted to additional duty as an EPI Technician at BHU Gandhi Umer Khan on 09-08-2008. He applied for promotion to the vacant post of EPI Technician but was reportedly met with reluctance from the respondents. Following his grievances about the non-resolution of his applications, he filed a departmental appeal on 25-09-2021, which remained undecided.

Hence, he approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. The respondents were summoned but they failed to submit their written reply/comments, therefore, they were placed ex-parte vide order dated 18th January, 2023.

3. The learned counsel for the appellant contended that the appellant has served the department since his appointment and possesses the necessary certification for the EPI Technician post. He next contended that the respondents have allegedly exercised discriminatory practices, as other Class IV employees have been promoted to EPI Technician positions despite the appellant's seniority and qualifications. He further contended that the refusal to promote the appellant contravenes his fundamental rights as guaranteed under the Constitution of the Islamic Republic of Pakistan, which mandates equal treatment in matters of public service. In the last, he argued that the appellant may be promoted/adjusted/appointed on the post of EPI Technician since 2008.

4. On the other hand, the learned Deputy District Attorney for the respondents opposed the contention of the learned counsel for the appellant and contended the appellant has failed to annex the specific rules that govern the criteria for promotion to the post of EPI Technician. He next contended that the appellant has not annexed the seniority list with the appeal, which could substantiate his claim that he holds seniority for promotion to the post of EPI Technician. He further contended that the appellant failed to present factual evidence of discriminatory behavior or policies, asserting that promotion

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opportunities were equally extended to all eligible candidates. He also contended that overall, the appeal lacks the necessary documentary evidence to support the appellant's position, therefore, the appeal is liable to be dismissed due to insufficient evidence.

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


6. The record shows that the appellant was appointed as a Chōwkidar vide order dated 01.11.2004. The primary aim of this appeal is for the appellant to secure a promotion to the post of EPI Technician. Despite the appellant's possession of a relevant certificate and commendable service history, the appeal raises issues primarily concerning the prerequisites for such a promotion. Promotions within the department in question are governed by established service rules. These rules consider a combination of factors including but not limited to, academic or professional certification, seniority and other eligibility criteria as defined by the applicable service regulations. The appellant has not provided, or annexed, the pertinent service rules under which he claims eligibility and entitlement for promotion to EPI Technician. The absence of these rules is a significant oversight as they are critical to substantiate any claim for promotion. The appellant through instant appeal seeks dual relief: (a) promotion to the post of EPI Technician and (b) a change or challenge to the existing service rules concerning eligibility for such a promotion. This constitutes a procedural flaw as appeals generally should focus on a singular relief type. A challenge to the service rules should be a separate legal action. The instant appeal


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cannot proceed in its present form due to aforementioned deficiencies. The appellant was required to first formally challenge the service rules in question if they indeed preclude his eligibility for promotion to the EPI Technician post. This challenge must be adjudicated separately as it requires judicial review of the rules themselves. Once (and if) the service rules are amended in the appellant's favor, he may re-apply or reappraise his promotion prospects according to the new guidelines.

7. Consequently, the appeal in hand stands dismissed being meritless. Parties are left to bear their own 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 08th day of October, 2024.*



AURANGZEB KHATTAK
Member (Judicial) 08/10/2024.



RASHIDA BANO
Member (Judicial)

ORDER

08th Oct, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand stands dismissed being meritless. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 08th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial) 2024.