

Service Appeal No.51/2022 titled "Dr. Hanif Afzal Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others" decided on 22.10.2024 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

Service Appeal No. 51/2022

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

Dr. Hanif Afzal S/o Sher Afzal R/o Sher Garh, Tehsil Takth-bai, District Mardan..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department at Civil Secretariat Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Health Department at Civil Secretariat, Peshawar.
4. The Director General, Health & Services Khyber Pakhtunkhwa, Warsak Road, Peshawar.....(Respondents)

Present

NAILA JAN,
Advocate

...

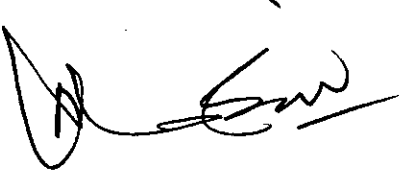
For appellant

Naseer-Ud-Din Shah,
Assistant Advocate General

...

For respondents

Date of Institution..... 06.12.2021
Date of Hearing..... 22.10.2024
Date of Decision..... 22.10.2024



JUDGEMENT

KALIM ARSHAD KHAN, CHAIRMAN: The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal the appellant may kindly be

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considered for promotion as Principal Medical Officer (BPS-19) when junior to the appellant was promoted with all back benefits"

2. Brief facts of the case are that the appellant was initially appointed as Medical Officer (BPS-17) on contract basis vide order dated 18.12.1995 and later on he was regularized w.e.f 2001. He was promoted from the post of Medical Officer (BPS-17) to Senior Medical Officer (BPS-18) vide Notification dated 15.11.2017; that vide Notification dated 08.05.2019 junior to the appellant was promoted to the post of Principal Medical Officer (BPS-19) while the name of appellant was deferred due to missing of his PERS for the year 2018. Feeling aggrieved the appellant submitted application to respondent No. 3 which was forwarded to respondent No. 4 vide letter dated 15.09.2020 in response to which respondent No. 4 vide letter dated 16.10.2020 stated that due to deficiency of PERs and other documents the appellant was deferred and he will be considered in the promotion case of Senior Medical Officer (BS-18) to the post of Principal Medical Officer (BS-19) in the next PSB meeting. An inquiry was also conducted on the application of the appellant and Dr. Baber Ali Shaukat was nominated as inquiry officer who submitted inquiry report and confirmed that the PERs dossier for the year 2018 was submitted by the appellant, however due to rush of work the same was missing in the concerned section and recommended that the name of the appellant may be included in the next PSB meeting; that vide Notification dated 16.10.2021 again juniors to the appellant were promoted to the post of Principal Medical Officer (BS-19). Feeling aggrieved from the impugned

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Notifications the appellant filed departmental appeal which was not responded within the statutory period, hence preferred the instant service appeal on 06.12.2021.

3. 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.

4. Learned counsel for the appellant argued that the impugned Notification is against the law, rules and principle of natural justice; that the inquiry officer in its report declared that the negligence was on the part of the respondent department even than the appellant was deprived from the right of promotion; that the apex court has laid down the principle that providing ACRs/PERs is the responsibility of the department and a civil servant cannot be deprived from promotion on the basis of non-production of ACRs, however, despite production of the ACRs for the year 2018, the appellant has not been considered for promotion to the post of Principal Medical Officer (BS-19) which is violation of the settled principles of law; that the respondent department violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that despite assurance by the respondent No. 3 & 4 for consideration of the appellant promotion in the next PSB, his name was not forwarded to the PSB for promotion from due date. In the last, he argued that the appeal may be accepted as prayed for.



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5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant is junior to all the promoted doctors and he was also not eligible for promotion at that time because of his non-availability of his PERs for the year 2018; that the name of the appellant was included in the panel of promotion at serial No. 114 while the vacant post of PMO (BS-19) were 63, therefore he could not be promoted; that the appellant has recently been promoted to the post of PMO (BS-19) vide Notification dated 23.12.2022, hence the instant appeal becomes infructuous.

6. Perusal of record reveals that the appellant was promoted to the post of Senior Medical Officer (BS-18) vide Notification dated 15.11.2017. Moreover, junior to the appellant was promoted to the post of Principal Medical Officer (BS-19) while the appellant's promotion to Principal Medical Officer (BPS-19) was deferred due to missing Performance Evaluation Reports (PERs) for 2018. An inquiry confirmed submission of the PERs but attributed the missing documents to departmental negligence. Despite assurances, juniors were promoted twice (Notifications dated 08.05.2019 and 16.10.2021) while the appellant's name was overlooked. The appellant's departmental appeal remained un-responded, prompting this instant service appeal. Record further reveals that during the pendency of the service appeal the appellant was promoted to the post of Principal Medical Officer (BS-19) vide Notification dated 23.12.2022 but with immediate effect not from the date when his junior colleagues were promoted. It is admitted fact that the appellant submitted his ACR for the year 2018. At the time of processing of promotion case of the appellant and his

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colleagues to the BS-19 in the year 2019 appellant stood at serial No. 243 of the seniority list of the Senior Medical Officer and was eligible for promotion to next higher scale in all respect. His case for promotion alongwith his other colleagues were prepared by the respondent department. In the meeting of PSB the appellant was deferred for promotion from BS-18 to BS-19 on account of deficiency of ACR for the year 2018. There was no fault on part of the appellant for delay of his promotion case. He was eligible for promotion in terms of length of service, completion of service record including ACRs and availability of posts. The delay for placement of the promotion case of the appellant occurred on part of the respondent department. As per promotion Policy 5 (d) when officer promotion was deferred due to some deficiency he will have to be promoted from the date of deferment or removal of deficiency, therefore, when it was established on record that appellant had filed the PERs for the year 2018 which was missing due to fault of department which was later on provided. In such situation appellant is entitled to have been promoted from the date when his promotion case was deferred for the first time by the PSB. There are numerous judgments of the august Supreme Court of Pakistan as well as of this Tribunal allowing the aggrieved civil servant in such like cases for pro forma promotion on notional basis. Reliance is placed on 2012 SCMR 126, 2021 SCMR 1266 and the judgment of This Tribunal rendered in Service Appeal No.552/2015 titled "Mian Zaman Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others" Service Appeal No. 797/2018 titled "Muhammad Saeed Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil

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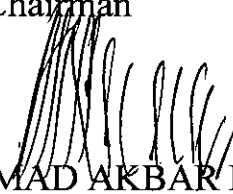
Secretariat, Peshawar and 03 others" & Service Appeal No. 625/2018 titled "Anees Ahmed Versus The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others."

7. In view of the above discussion, the appeal is remitted back to the respondent department to consider the appellant for promotion from the date his colleagues were promoted to BS-19. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of October, 2024.*



(KALIM ARSHAD KHAN)
Chairman





(MUHAMMAD AKBAR KHAN)
Member (E)

Kamranullah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 51/2022

Dr. Hanif Afzal---Versus---Government of Khyber Pakhtunkhwa

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-23</u> 22nd October, 2024</p>	<p>Present:</p> <ol style="list-style-type: none">1. Miss Naila Jan, Advocate on behalf of the appellant.2. Mr. Naseer ud Din Shah, Assistant Advocate General on behalf of official respondents.3. Arguments heard and record perused.4. Vide our detailed judgment of today placed on file, the appeal is remitted back to the respondent department to consider the appellant for promotion from the date his colleagues were promoted to BS-19. Costs shall follow the event. Consign.5. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of October, 2024.</i> <p> (KALIM ARSHAD KHAN) Chairman</p> <p> (MUHAMMAD AKBAR KHAN) Member (E)</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.51/2022

Date of presentation of Appeal.....06.12.2021
Date of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Dr. Hanif Afzal S/o Sher Afzal R/o Sher Garh, Tehsil Takth-bai, District Mardan..... (**Appellant**)
Versus

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3. The Secretary to Government of Khyber Pakhtunkhwa, Health Department at Civil Secretariat, Peshawar.
4. The Director General, Health & Services Khyber Pakhtunkhwa, Warsak Road, Peshawar..... (**Respondents**)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE PSB MEETING HELD ON MAY, 2019, NOTIFICATION DATED 08.05.2019 AND PSB HELD ON 31.07.2021, NOTIFICATION DATED 16.08.2021 WHEREBY JUNIOR TO THE APPELLANT HAVE BEEN PROMOTED TO THE POST OF PRINCIPAL MEDICAL OFFICER (BPS-19) HOWEVER, THE APPELLANT WAS NOT CONSIDERED FOR PROMOTION AND IN ACTION ON THE PART OF THE RESPONDENTS ON THE DEPARTMENTAL APPEAL OF THE APPELLANT DESPITE EXPIRY OF THE STATUTORY PERIOD OF 90 DAYS.

PRESENT

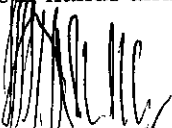
1. Miss Naila Jan, Advocate on behalf of the appellant.
2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of official respondents


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: Respondents have not deposited the costs as imposed upon them vide order dated 12th July, 2024 passed by this Tribunal.

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

Given under our hands and the seal of this Court, this 22nd day of October, 2024.


(MUHAMMAD AKBAR KHAN)
Member (E)


(KALIM ARSHAD KHAN)
(Chairman)