

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 504/2018

Date of Institution ... 11.04.2018
Date of Decision ... 02.04.2021

Mr. Muhammad Jamil, Assistant Director (BPS-17) (Rtd) Office of the Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar and four others.

... (Respondents)

Noor Muhammad Khattak,
Advocate

... For appellant.

Muhammad Rasheed,
Deputy District Attorney

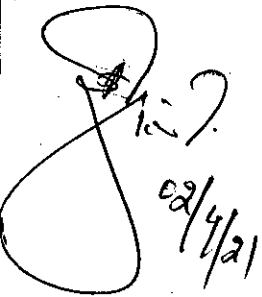
... For respondents.

Rozina Rehman
Atiq ur Rehman Wazir

... Member (J)
... Member (E)

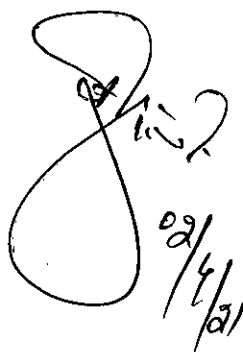
JUDGMENT

ROZINA REHMAN, MEMBER: Facts gleaned out from the memorandum of appeal are that appellant was an employee of respondents' Department who served for almost 42 years. He was promoted alongwith his two colleagues to the post of Assistant Director (Admin) (BPS-17) on seniority cum fitness basis vide order


02/4/21

dated 28.06.2002. It was on 03.07.2014 when respondent No.4 approved S.N.E for creation of post of Deputy Director (Ministerial) (BPS-18) in the respondents' Department w.e.f 01.07.2014 and accordingly necessary amendments were made in the service rules by inserting/creating the post of Deputy Director (Ministerial) in the said rules. The appellant being senior most and on the top of seniority list rather sole candidate for promotion to the post of Deputy Director, was recommended for promotion through Working Papers for Provincial Selection Board. The respondents were requested time and again to expedite the case of appellant for promotion to the said post but the matter was delayed and finally he got retired on superannuation basis vide order dated 17.07.2017 without availing the benefit of promotion to the post of Deputy Director. After retirement, the impugned order was communicated, whereby, he was ignored from promotion without assigning any reason. He, therefore, preferred departmental appeal which was not responded to, hence, the instant service appeal.

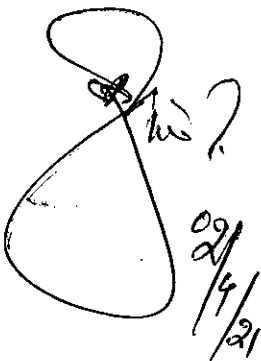
2. Learned counsel for appellant contended that the impugned order dated 18.02.2016 is against law, facts and norms of natural justice. He submitted that the appellant was not treated in accordance with law and rules on the subject and as such, the respondents violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He submitted that treatment meted out to the appellant, is discriminatory in nature which act is against the dictum enshrined in Article-38 (e) of the Constitution of Islamic Republic of

A handwritten signature in black ink, followed by the date '02/4/21' written vertically.

Pakistan, 1973. He, therefore, submitted that as per rules and regulation, the appellant is entitled for promotion to the post of Deputy Director (BPS-18) with all consequential benefits.

3. Conversely, learned D.D.A submitted that the promotion case of the appellant from Assistant Director (BPS-17) to Deputy Director (BPS-18) was taken up with the Establishment Department for placement before Provincial Selection Board which was returned to the Health Department by Establishment Department assigning reason as a lot of discrepancies were found in his case. He submitted that before the subject promotion case could be taken up with the Establishment Department again, the officer got retired from service, hence, he has no legal footing to claim promotion.

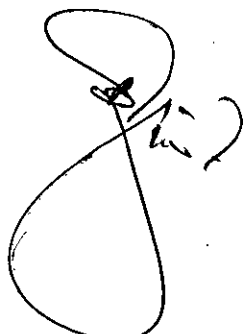
4. Record shows that the appellant was promoted to the post of Assistant Director (BPS-17) on regular basis vide order dated 28.06.2002 alongwith two others namely Saadul Mabood and Ghulam Hussain. The former is dead while the second one got retired from service. Record shows that S.N.E for creation of post of Deputy Director was approved and necessary amendments were made in the service rules. Admittedly, appellant was senior most and on the top of seniority list rather sole candidate for promotion to the post of Deputy Director. All these facts are not disputed. Working Paper for Provincial Selection Board is also available on file which clearly shows that vacancy was available and it was purely promotion post of Deputy Director (BPS-18) which was to be filled in by promotion on the basis of seniority cum fitness from amongst the Assistant Directors

 09/14/21

(Administration) with five years' service as such. Grading and quantitative form in respect of the present appellant for regular promotion to BPS-18 is also available on file which shows that he was an efficient, honest and hardworking officer. Final seniority list shows that he was the sole candidate on the seniority list of Assistant Directors. He had earned 88.80 Marks out of 100 as per Working Paper but he was not considered for promotion and in this regard, copy of Item No.19 is available on file which is in respect of promotion of the appellant from Assistant Director (BPS-17) to the post of Deputy Director (Ministerial) (BPS-18). The Board observed that:

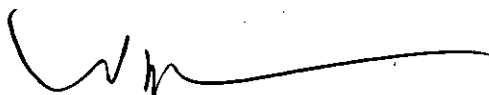
"There were many issues/irregularities in the office of Director General Health Services which remained unattended since long and the Secretary Health was compelled to take over the record by himself for further necessary action if he is so efficient officer, then why he did not redress all these issues well in time."

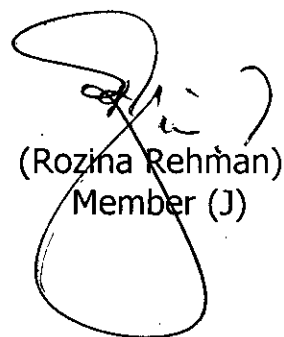
With these remarks, the Board directed the Health Department to resubmit the case after doing necessary homework. From the above mentioned Item No.19, it is crystal clear that it was for Secretary Health to redress all the issues/irregularities in the office of Director General Health Services. As per record, his case was never resubmitted till the time of his retirement on 17th July, 2017. Item No.19 of Meeting of P.S.B held on 18.02.2016 was never communicated to the appellant well within time which is evident from


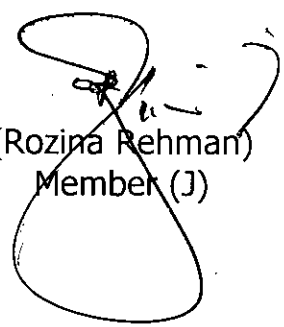

02/4/21

the record and nothing was produced by the respondents in order to show that the same was communicated before retirement of the appellant with the result that he filed departmental appeal on 27.12.2017 after getting the mentioned Minutes in shape of Item No.19 of the P.S.B. Appellant was punished for no fault of his own. He had no adverse entry in his A.C.R standing against his name at that period of time. Coming to the question of limitation, undoubtedly, Limitation Act is penal in nature and rights accrued cannot be taken away unless sufficient cause is shown. However, technicalities of law should not stand in the way of a person who has been singled out rather persecuted without knowing as to what crime or sin he has committed. We are also fortified in our view by the judgment of the Apex Court reported in P.L.D 1992 S.C 825 that in matters of promotion, pay and other emoluments cause of action is recurring, limitation does not foreclose the right. Resultantly we accept this appeal as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
02.04.2021


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.04.2021	<p><u>Present.</u></p> <p>Noor Muhammad Khattak, ... For appellant Advocate</p> <p>Muhammad Rasheed, ... For respondents Deputy District Attorney</p> <p>Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED.</u> 02.04.2021</p> <p> (Atiq ur Rehman Wazir) Member (E)</p> <p> (Rozina Rehman) Member (J)</p>

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.


Reader

21.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 12.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

12.01.2021

Counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19, the case is adjourned for the same on 02.04.2021 before D.B.


READER

15.01.2020

Appellant absent. Learned counsel for the appellant absent. Naqib Ullah Stenographer representative of the respondent No.3 present and stated that respondent No.3 relies upon joint reply of the ~~respondent No.2 and 5~~. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 24.03.2020 before D.B. Appellant be put to notice for the date fixed.

Member



Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 08.06.2020 before D.B.



Reader

8.06.2020

Bench is incomplete as learned Member (J) is on leave, therefore, the case is adjourned. To come up for the same on 19.08.2020 before D.B.



Reader

01.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Sajid Superintendent representative of respondent No. 4 Hazrat Shah Superintendent for the respondent No. 2 present and seeks time to file written reply/comments. Last opportunity is extended with the costs of Rs. 1000/- Granted. To come up for written reply/comments on 27.08.2019 before S.B


Member

27.08.2019

Appellant in person and Addl. AG alongwith Salim Javed, Litigation Assistant for the respondents.

Respondents have failed to submit written reply despite last opportunity was granted to them on 12.06.2019 which was further extended on 01.07.2019 subject to payment of cost of Rs. 1000/-. The appeal is, therefore, posted to 13.11.2019 for arguments before D.B.


Chairman

13.11.2019

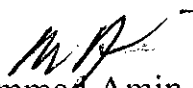
Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Sher Baz Khan S.O present. Representative of the respondent department submitted reply. Adjournment requested. Adjourn. To come up for arguments on 15.01.2020 before D.B.


Member


Member

14.03.2019

Junior counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith M/S Hazrat Shah, Superintendent and Muhammad Sohail, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG seeks further adjournment. Adjourned. To come up for written reply/comments on 17.04.2019 before S.B.


(Muhammad Amin Khan Kundi)

Member

17.04.2019

No one present on behalf of appellant. Written reply not submitted. Rehmat Khan Superintendent representative of the respondent No.4 present and seeks time to furnish written reply/comments. Notice be issued to remaining respondents with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 12.06.2019 before S.B.


Member

12.06.2019

Appellant in person and Addl:AG alongwith Mr. Jafar Ali, Assistant for respondents present. Written reply not submitted. Requested for adjournment. Adjourned but as a last chance. Case to come up for written reply/comments on 01.07.2019 before S.B.


(Ahmad Hassan)

Member

01.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 19.12.2018.


READER

19.12.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Retired Assistant Director BS-17) has preferred the present service appeal for pro-forma promotion to the post of Deputy Director (Ministerial) BPS-18.

Points raised need consideration. The present service appeal is admitted for regular hearing subject to all just/ valid legal objections. The appellant is directed to deposit security and process fees within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 29.01.2019 before S.B.

Appellant Deposited
Security & Process Fee


Member


29.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Jaffar Ali, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 14.03.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22.06.2018

Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 09.07.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

09.07.2018

Neither appellant nor his counsel present. To come up for preliminary hearing/further proceedings on 07.08.2018 before S.B.


Chairman

07.08.2018

Today again neither appellant nor his counsel present. Case to come up for preliminary hearing on 27.09.2018 before S.B.


Chairman

27.09.2018




Mr. Amir Zaman, Clerk of counsel for the appellant present. Due to general strike of the bar, counsel for the appellant is not in attendance. Requested for adjournment. Granted. To come up preliminary hearing on 01.11.2018 before S.B.


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 504/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11/04/2018	<p>The appeal of Mr. Muhammad Jamil presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/4/18</p>
2-	12/04/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/04/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	26.04.2018	<p>Junior counsel for appellant present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on <u>22.06.2018</u> before S.B.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 504 /2018


MUHAMMAD JAMIL VS HEALTH DEPARTMENT

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5-	Working papers	D	8- 9.
6-	Pro-forma	E	10.
7-	Seniority list	F	11- 14.
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9-	Retirement order	H	18.
10-	Impugned order	I	19.
11.	Departmental appeal	J	20.
12.	Vakalat nama	21.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE
MOBILE NO.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 504 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 529

Dated 11-4-2018

Mr. Muhammad Jamil, Assistant Director (BPS-17) (Rtd),
O/O the Director General Health Services Department,
Khyber Pakhtunkhwa, 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 Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 18.2.2016 COMMUNICATED TO THE APPELLANT ON 22.12.2017 WHEREBY THE APPELLANT HAS BEEN IGNORED FROM PROMOTION TO THE POST OF DEPUTY DIRECTOR (MINISTERIAL) (BPS-18) AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 18.2.2016 communicated to the appellant on 22.12.2017 may kindly be set aside and the appellant may kindly be consider for pro-forma promotion to the post of Deputy Director (Ministerial) BPS-18 w.e.f 01.07.2014 with all back/monitory benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellent.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellent was the employee of the respondent Department and had served the respondent Department for almost forty two years quite efficiently and up to the entire satisfaction of his superiors.

Filed to-day
11/4/18
Registrar

- 2- That vide order dated 28.06.2002 the respondent No.2 promoted the appellant along with two colleagues namely Mr. Saad Ullah Mabood and Mr. Ghulam Hussain to the post of Assistant Director (Admn:) (BPS-17) on seniority cum fitness basis w.e.f. 31.5.2002. Copy of the order dated 28.06.2002 is attached as annexure **A.**
- 3- That vide letter dated 03.07.2014 the respondent No.4 approved the SNE for creation of post of Deputy Director (Ministerial) BPS-18 in the respondent Department w.e.f 01.07.2014. That accordingly vide Notification dated 20.8.2015 the respondent Department made necessary amendments in the service rules dated 29.03.1982 by inserting/creating the post of Deputy Director (Ministerial) in the said rules. Copies of the letter dated 03.07.2014 and Notification dated 20.08.2015 are attached as annexure **B & C.**
- 4- That appellant being senior most and top of the seniority list rather the sole candidate for promotion to the post of Deputy Director (Ministerial) (BPS-18) the respondents recommended the appellant for promotion to the post of Deputy Director (Ministerial) (BPS-18) through working papers for Provincial Selection Board vide dated 26.11.2015. Copies of the working papers, pro-forma, quantification form and seniority list along with other related documents are attached as annexure.....**D, E, F & G.**
- 5- That where after the appellant time and again requested the respondents to expedite the case of the appellant for promotion to the post of Deputy Director (Ministerial) (BPS-18) but the respondents one way or the other delayed the same. That finally the appellant got retired from service on superannuation basis on vide order dated 17.07.2017 without availing the benefit of promotion to the post of Deputy Director (Ministerial) BPS-18. Copy of the retirement order is attached as annexure.....**H.**
- 6- That after retirement the appellant had been communicated the impugned order dated 18.02.2016 whereby the appellant was differed/ignored from promotion to the post of Deputy Director (Ministerial) (BPS-18) without assigning any reason. That appellant feeling aggrieved from the impugned order dated 18.2.2016 communicated on 22.12.2017 preferred Departmental appeal on 27.12.2017 but no reply has been received so far. Copies of the Impugned order and Departmental appeal are attached as annexure.....**I & J.**
- 7- That appellant having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 18.2.2016 is against the law, facts, norms of natural justice and materials on the record hence tenable and liable to be modified.

- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the treatment meted out to the appellant is discriminatory in nature and as such the impugned order dated 18.2.2016 is not tenable and liable to be set aside.
- D- That the impugned order dated 18.2.2016 has been issued in arbitrary and malafide manner, therefore, not tenable and liable to be set aside.
- E- That the act of the respondents is against the dictum enshrined in Article 38 (e) of the Constitution of Islamic Republic of Pakistan, that to "reduce disparity in the income and earning of the individual including persons in different classes in the service of Pakistan".
- F- That as per Rules and regulations the appellant is fully entitle for promotion to the post of deputy Director (Ministerial) BPS-18 with all consequential benefits.
- G- That the impugned order dated 31.10.2017 is violative of Civil Servant act 1973 as well as appointment, promotion and transfer Rules, 1989.
- H- That appellant being the sole candidate/employee of the respondent Department has the right to be promoted to the post of Deputy Director (BPS-18) from the date when the said post was created in the Department.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Dated: 9.4.2018

APPELLANT


MUHAMMAD JAMIL

THROUGH:


NOOR MOHAMMAD KHATTAK


**MUHAMMAD MAAZ MADNI
ADVOCATES**

ANNEX-II

A-4

G. G. Health, NWFP, PISA
Dairy No. 4111
Date: 28/6/2002

GOVT OF NWFP,
HEALTH DEPARTMENT

Dated 28/6/2002

ORDER.

No.SO(Reg)10-4/99/2002. On recommendation of the Departmental Promotion Committee Governor NWFP, is pleased to promote the following officers from Acting Assistant Director (E Selection Grade) to the post of Assistant Director (BPS-17) on regular basis in the Directorate C Health Services, NWFP, Peshawar with effect from 31-05-2002:-

1. Mr. Saadul Mabood. - *Died.*
2. Haji Ghulam Hussain. - *Rtd.*
3. Mr. Muhammad Jamil.

SECRETARY HEALTH NWFP

Ends: No & date even.

Copy forwarded to the:-

1. Director General Health Services NWFP, Peshawar.
2. Accountant General, NWFP, Peshawar.
3. P.S to Secretary to Govt. of NWFP, Health Department, Peshawar.
4. Officers concerned.

17/2
2mm
12mm
(NAZIR A. AWAN)
SECTION OFFICER(REG)

28/6/02

DIRECTOR (Administration)
Directorate General Health Services
N. W. F. P. PESHAWAR.

ATTESTED

af



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

NO. BOVI/FD/4-2/2011-12/VOL-IV
DATED PESHAWAR THE 03-07-2014

B-5

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department, Peshawar

Subject: CREATION OF POSTS THROUGH SNE (FRESH) FOR 2014-15.

Dear Sir,

I am directed to refer to the subject noted above and to convey the concurrence of Finance Department for the creation of 01 number post of Dy. Director (Ministerial Cadre) B-18 in DGHS Peshawar, through SNE (FRESH) 2014-15 with effect from 1st July 2014 subject to the observance of all codal/legal formalities before making appointment/filling of the said post.

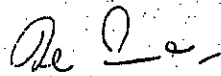
- 2- The expenditure involved therein will be met out from the sanctioned budget grant during current financial year 2014-15.
- 3- Audit copy may kindly be furnished to this Department for authentication.


Yours faithfully,


(LAL SAEED KHATTAK)
Budget Officer-VI

C.C.

1. Director FMIU, Finance Department.
2. Master File.
3. DG Health Services, Peshawar.


Budget Officer-VI


DIRECTOR Administration
Directorate General Health Services
W. W. F. P. PESHAWAR.

ATTESTED

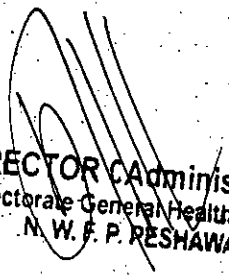


076101 ADMINISTRATION

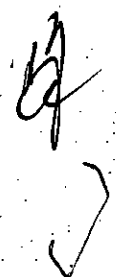
AMOUNT TO BE SPENT DURING THE
YEAR 2014-2015

FUNCTIONAL-CUM OBJECT CLASSIFICATION & PARTICULARS OF THE SCHEME	NUMBER OF POSTS	NON	RECURRING	TOTAL
		RECURRING	RECURRING	
		Rs	Rs	Rs
07 HEALTH				
076 HEALTH ADMINISTRATION				
0761 ADMINISTRATION				
076101 ADMINISTRATION				
PR4309 Director General Health Services (01-2014) Creation of Posts for DGHS peshawar			484,000	484
A01 TOTAL EMPLOYEES RELATED EXPENSES.			240,000	24
A011 TOTAL PAY	1		240,000	24
A011-1 TOTAL PAY OF OFFICER	1		240,000	24
A01101 Basic Pay Of Officer	1		240,000	24
AD558 Deputy Director (BHS) (Ministerial)	1		244,000	24
A012 TOTAL ALLOWANCES			244,000	24
A012-1 REGULAR ALLOWANCES			7,000	
A01202 House Rent Allowance			30,000	
A01203 Conveyance Allowance			77,000	
A0120X Adhoc Allowance - 2010			23,000	
A01217 Medical Allowance			23,000	
A0121A Ad - hoc Allowance - 2011			48,000	
A0121M Adhoc Relief Allowance - 2012			36,000	
A0121T Adhoc Relief Allowance 2013				
Creation of Posts for DGHS peshawar			484,000	4
Director General Health Services			484,000	4

For the ensuing financial year, above posts have been agreed to be created on the demand of the department. Accordingly a sum of Rs. 484000 /-(Recurring) will be required for the purpose during 2014-2015


DIRECTOR (Administration)
Directorate General Health Services
N. W. F. RESHAWAR.

ATTESTED





GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 20th August, 2015

C-7

NOTIFICATION

No. SOH-III/10-4/2014. In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the Health Department, In consultation with the Establishment and Administration Department and the Finance Department hereby directs that in this Department's Notification No. SO (H)IV-4/13/75 Pt.II dated: 29-03-1982, the following further amendments shall be made, namely:-

AMENDMENT

In the Appendix, the serial Nos. "1" and "1A" shall be re-numbered as "1A" and "1B" respectively and before existing serial No. "1A", as so re-numbered, the following new entries shall be inserted, in respective columns, namely:-

1	2	3	4	5	6
"1"	Deputy Director (Ministerial)	-	-	-	By promotion on the basis of Seniority-cum-fitness, from amongst the Assistant Directors (Administration) with five years service as such."

**Secretary to Govt. of Khyber Pakhtunkhwa
Health Department**

Endst of even No and Date.

Copy forwarded for information and n/action to:-

1. The Director General Health Services Khyber Pakhtunkhwa Peshawar.
2. The Section Officer (R-II) Govt: of Khyber Pakhtunkhwa Establishment and Administration Department.
3. The Assistant Draftsman-II Govt: of Khyber Pakhtunkhwa Law Department.
4. The Accountant General Khyber Pakhtunkhwa Peshawar.
5. The Section Officer (R-II) Govt: of Khyber Pakhtunkhwa Finance Department.
6. The Manager Govt: Printing Press, Peshawar.
7. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
8. P.S to Secretary Health Govt: of Khyber Pakhtunkhwa Peshawar.
9. P.S to Special Secretary Health Govt: of Khyber Pakhtunkhwa Peshawar.
10. The Programmer IT Health Department Khyber Pakhtunkhwa Peshawar.

ATTESTED

(MUHAMMAD TARIQ)
Section Officer -III

Panel of Assistant Director (Administration) BPS-17 for consideration

S.No	Name of Assistant Director (Administration) BPS-17	Remarks
01	Muhammad Jamil	<p>Muammad Jamil joined Govt. Service on 23-12-1974 as Stenotypist and promoted as Senior Scale Stenographer on 07-06-1980. He was further promoted as Superintendent/ Administrative Officer BPS-16 on 30-05-1989 and thereafter promoted as Assistant Director (Administration) BPS-17 w.e.from 31-05-2002.</p> <p>He will attain the age of superannuation on 30-08-2017.</p> <p>According to the promotion policy, the minimum of aggregate marks shall be 50 for promotion to BPS-18. As per performance of Evaluation Reports, Muhammad Jamil has obtained 88.8 marks.</p> <p>The Health Department recommends that Muhammad Jamil may be considered for Promotion to the post of Deputy Director (Ministerial Cadre) BPS-18.</p>

Certificate

- (1). Certified that the officer included in the panel is eligible in all respects and possess the requisite length of service required for promotion
- (2). Also certified that no disciplinary action/proceedings or criminal charges in any court of Law are pending against the officer included in the panel.
- (3) Certified that Mr. Muhammad Jamil Assistant Director (BS-17) due for promotion to the post of Deputy Director(Ministerial Cadre) BS-18, Directorate General Health Services is neither involved in any NAB case nor entered into plea bargaining agreement with NAB authorities in the past.
- (4) Certified that the post of Assistant Director held by Mr.Muhammad Jamil in the Directorate General Health Services, Khyber Pakhtunkhwa Peshawar is single cadre post.

ATTESTED

[Handwritten signature]

Signature

[Handwritten signature]

Designation Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.

Dated

26-11-2015

WORKING PAPER FOR PROVINCIAL SELECTION BOARDDepartment Health.

1. Nomenclature of the post / Basic, Scale. Deputy Director (Ministerial Cadre) BPS-18
2. Service/Group/Cadre Ministerial Cadre
3. Sanctioned strength of the Cadre. 01

	Direct	Promotion	Transfer
4. (i) Percentage of share	-	100/%	
(ii) No. of posts allocated to each category.	-	01	
(iii) Present occupancy position	-	0	-
(iv) No. of vacancies in each category.	-	01	-

- (v) How did the vacancy (lies) under Promotion quota occur and since when? One post of Deputy Director (Ministerial Cadre) BPS-18 created w.e.from 01-07-2014. **(Annex-A)**

- (vi) Recruitment Rules. By Promotion on the basis of Seniority-cum-fitness from amongst the Assistant Directors (Administration) with five years service as such **(Annex-B)**.

- (vii) Required length of services. Five years as per Service rules.

- (viii) Whether to be promoted on Regular basis or appointed on acting charge basis? Regular basis.

- (ix) Mandatory training, if any. N.A.

- (x) Minimum required score on El. 50

ATTESTED

Signature

Designation Secretary to Govt. of Khyber Pakhtunkhwa
Health Department Peshawar.Dated 26-11-2015

E-10

PANEL PROFORMA FOR
PROVINCIAL SELECTION BOARD

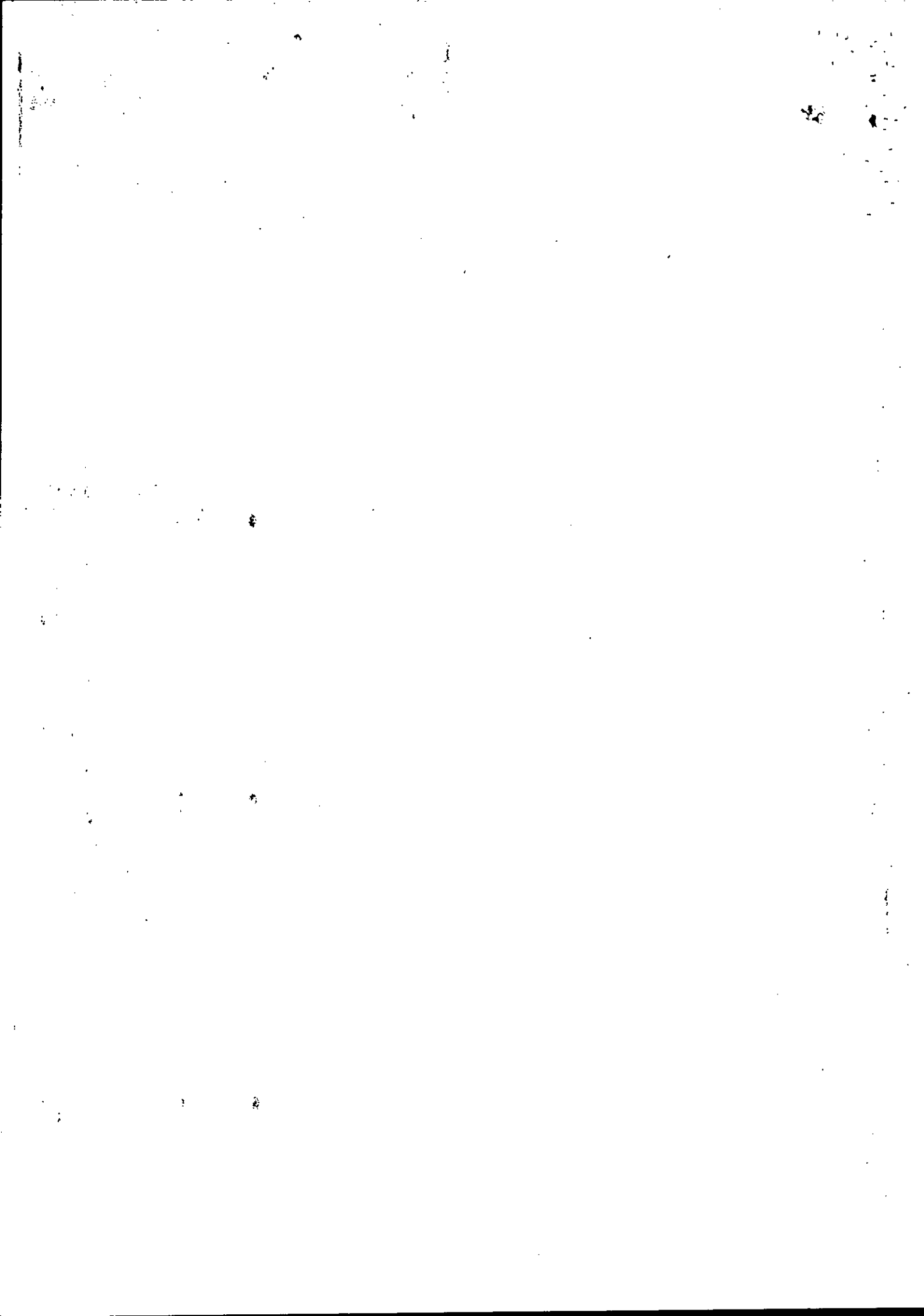
In respect of **MR. Muhammad Jamil Assistant Director BS-17**

Domicile: Peshawar		Service/Group: Health Ministerial Cadre.		Sen. No: 01			
Educational Qualification		Date of Birth		Date of Superannuation			
Bachelor of Arts		31.08.1957		30.08.2017			
SERVICE PARTICULARS							
Date of joining/ Service	Date of Promotion in		Length of service				Eligibility for consideration
	Present Scale	Lower rank	Total		In present scale		
			Year	Month	Year	Month	
23.12.1974 Steno Typist	30.05.2002 Assistant Director	i) 04.06.1980 Stenographer ii) 30.05.1989 Superintendent /AO	40	08	13	03	Yes
Important Appointments held in the present Rank/Post							
1	Assistant Director (Admin./Personnel)						
2							
3							
4							
Penalties (if any): NIL							
Training course (other than mandatory training):							
Number of PERs							
Basic Scale	Outstanding	Very Good	Good	Average	Below Average	Adverse Report/Remarks in	
BS-17	-	12 ½	-	-	-	-	
Awaited Report (PERs)			Additional Information (if any)				
-			---				
EFFICIENCY INDEX							
Required Threshold	Score of PERs		Marks awarded by PSB		Total		
50	88.8						
Recommendations of PSB							
Promoted		Deferred		Superseded			

DIRECTOR (Administration)
Directorate General Health Services
N. W. F. P. PESHAWAR
Prepared by

ATTESTED

Checked by



PSB -IV

F-11



RADING AND QUANTIFICATION FORM IN RESPECT OF MUHAMMAD JAMIL ASSISTANT DIRECTOR BPS-17 (ADMINISTRATION)
FOR REGULAR PROMOTION TO BPS-18

Seniority No. 01

Period of PER		Pen Picture		PERs Assessment	Fitness for Promotion	Score
From	To	Reporting Officer	Countersigning Officer			
Present Scale (BS-17)						
1.06.2002	31.12.2002	Morally sound and mentally balanced. His efficiency is not compromised under stress/ pressures.	Agreed	Very Good	Fit	05
1.01.2003	31.12.2003	He is efficient, will conversed with his job. He has done all the work assigned to him with honesty, efficiency and to the best of my satisfaction.	Agreed	Very Good	Fit	10
1.01.2004	31.12.2004	An honest, efficient, well conversed with his job. He has performed all the duties assigned to him efficiently and to the best of my satisfaction.	Agreed	Very Good	Fit	10
1.01.2005	31.12.2005	Efficient, honest, hardworking officer. He has performed all the duties assigned to him efficiency and to the best of my satisfaction.	Agreed	Very Good	Fit	10
1.01.2006	31.12.2006	He can stand any external and internal stress.	Agreed	Very Good	Fit	10
1.01.2007	31.12.2007	He can with stand any sort of external and internal pressure	Agreed	Very Good	Fit	10
1.01.2008	31.12.2008	He is punctual in duties, is knowledgeable and in fact he is an asset to the institution of DGHS.	Agreed	Very Good	Fit	08
1.01.2009	31.12.2009	He is updated/ full knowledge of Laws and rules, pertaining to service matters.	Agreed	Very Good	Fit	08

ATTESTED

12

	01.01.2010	31.12.2010	He is well informed/ conversent with all laws and Rules	Agreed	Very Good	Fit	08
1	01.01.2011	31.12.2011	Hard worker and knows his job	Agreed	Very Good	Fit	08
2	01.01.2012	31.12.2012	Knows his job with aptitude towards learning.	Agreed	Very Good	Fit	08
2013	01.01.2013	31.12.2013	Hardworking, punctual and dutiful	Mr. Muhammad Jamil a trust worthy, upright and honest officer. He is an asset for the Department. At many occasions , his views and recommendations has saved the dignity of the Department in the Courts of law	Very Good	Fit	08
2014	01.01.2014	31.12.2014	Well informed and knowledge of laws and regulations.	Agreed with Reporting officer Mr. Jamil is a thorough gentleman. He is obedient, regular and knows his job. He is an asset for the Department.	Very Good	Fit	08

Comprehensive Efficiency Index

PERs Quantified Score 60:40 @ 100%	Basic Scale	Aggregate Score	Weightage Factor	Points Obtained
	Present Scale		111 / 13	8.53 X 10
Previous Scale		-	-	-
(i) Additions*		-	-	-
(x) Deletions**		-	-	-
Total (A):		-	-	85.38

Required threshold on CEI for promotion to BS-18 is 50.

ATTESTED

* 2 marks shall be added for serving in a government training institution including Those meant for specialized training in any particular cadre for a period for 2 years or more.
 ** 5, 3 & 1 marks shall be deducted for each major, minor penalty and adverse Remarks respectively.



6
D No 750
17/3/15 (13)
GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 06th March, 2015

2496
16/3/15
NOTIFICATION.

No. SOH-III/10-4/2015. In pursuance of sub-section (5) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act-1973 and Establishment Department's circular letter No. SOR-I(E&AD) 3-15/88(Vol-I), dated: 09-05-2002, the Competent Authority is pleased to notify the final seniority list of Assistant Director (Administration) BS-17, Directorate General Health Services, Khyber Pakhtunkhwa as stood on 01-01-2015 for information of all concerned.

**Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department.**

Endst No. of even No and Date.

Copy forwarded to:-

- ✓ 1. Director General Health Services, Khyber Pakhtunkhwa.
2. PS to Secretary Health, Khyber Pakhtunkhwa.
3. PS to Special Secretary Health, Khyber Pakhtunkhwa.
4. PA to Additional Secretary (E) Health, Khyber Pakhtunkhwa.
5. Deputy Director (I.T) Health, Khyber Pakhtunkhwa.
6. Officer concerned.

(MUHAMMAD TARIQ)
SECTION OFFICER-III

ATTESTED
M

DIRECTOR (Administration)
Directorate General Health Services
W. W. F. PESHAWAR

14

FINAL SENIORITY LIST OF ASSISTNT DIRECTOR BPS-17(ADMINISTRATION) AS STOOD ON 01-01-2015

Total Sanctioned posts - 01
Permanent - 01
Temporary - 00

S. No	Name of Officer with Academic Qualification	Date of Birth with Domicile	Date of 1 st entry into Govt. Service a) Stenotypist b) Sr. Scale Stenographer c) Supdt./AO	Regular Appointment / Promotion to Present post			Present posting with date
				Date	BPS	Method of Recruitment	
01	Muhammad Jamil Bachelor of Arts	31/08/1957 Charsadda	a) 23/12/1974 b) 07/06/1980 c) 30/5/1989	31-5-2002	17	DPC	Assistant Director Directorate General Health Services, Khyber Pakhtunkhwa Peshawar. 31/05/2002

Certified that the above seniority list is final and un-disputed

ATTESIED

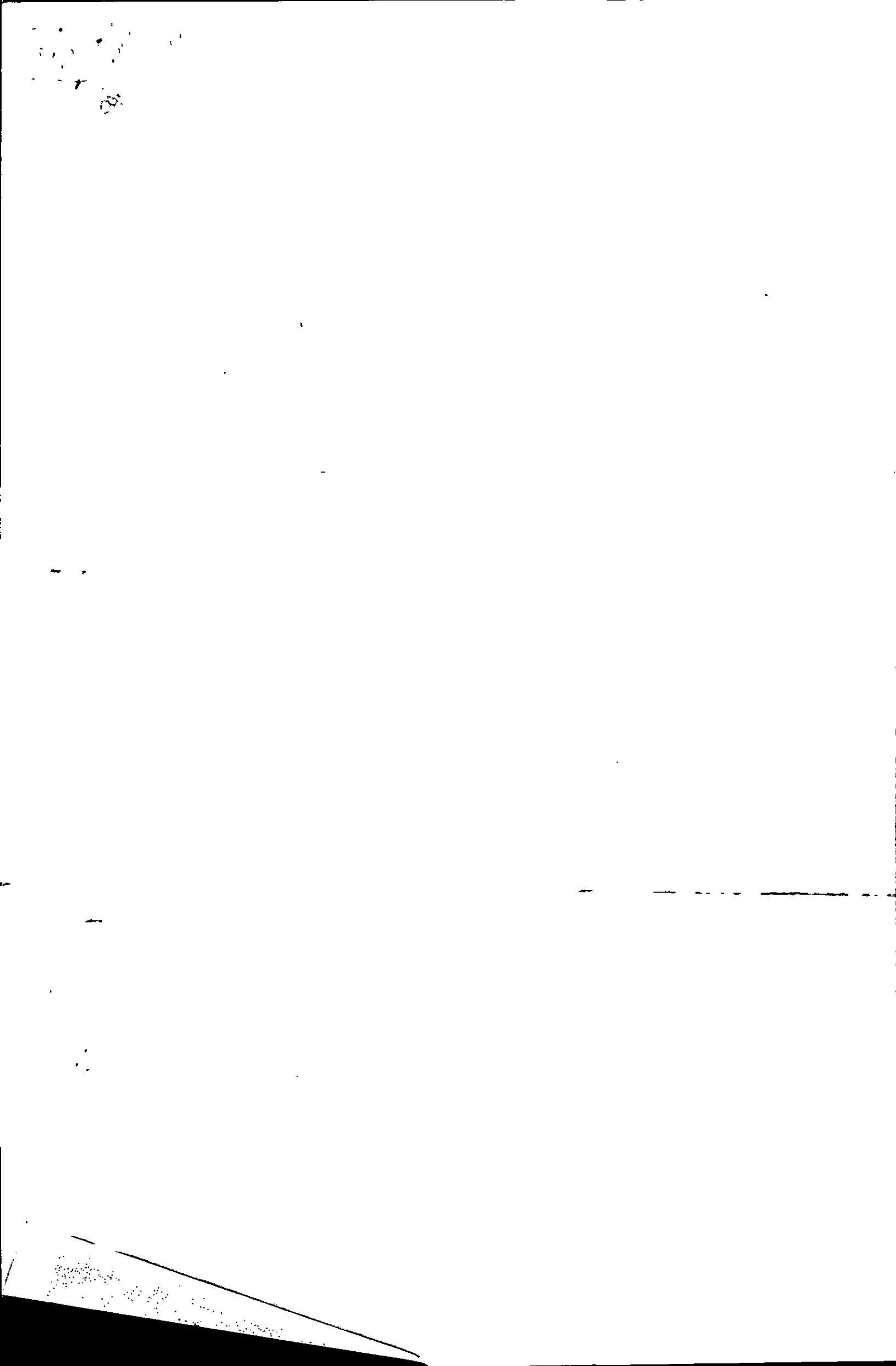
4

DIRECTOR (Administration)
Directorate General Health Services
N. W. F. P. PESHAWAR

DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

9/1/15

21/1/15





**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR**

G-15

E-Mail Address: nwfpdghs@yahoo.com office Ph# 091-9210269
Exchange# 091-9210187, 9210196 Fax # 091-9210230

No. 9049 /Personnel(Promotion) Dated: 25/8/2015



To,

The Secretary to Government of
Khyber Pakhtunkhwa, Health
Department Peshawar.

SUBJECT:

**PROMOTION OF ASSISTANT DIRECTOR BS-17 TO
THE POST OF DEPUTY DIRECTOR (MINISTERIAL)
BS-18 IN THE HEALTH DEPARTMENT.**

Dear Sir,

I have the honour to submit the Promotion case of Assistant Director (BS-17) to the post of Deputy Director (BS-18). The post Deputy Director (Ministerial cadre) BS-18 has become vacant due to creation of one post of Deputy Director (Ministerial cadre) w.e. from 1-07-2014 (Annex-I) and required to be filled-in by way of promotion on the basis of seniority cum-fitness from amongst the Assistant Directors (Administration) BS-17, on seniority-cum-fitness with five (05) years service as such. (Annex-II)

The following Assistant Director (BS-17) is due for promotion to the post of Deputy Director (Ministerial cadre) BS-18 according to the Seniority List:-

1. Muhammad Jamil Assistant Director Directorate General Health Services, Khyber Pakhtunkhwa Peshawar.

Certified that the officer included in the panel is eligible in all respects and possess the requisite length of service required for promotion.

Also certified that no disciplinary action/ proceedings or criminal charges in any court of Law are pending against the officer included in the panel.

The promotion case, complete in all respect of the above named officer is submitted for favour of further necessary action.

ATTESTED

[Signature]

[Signature]

**DIRECTOR GENERAL HEALTH
SERVICES, KHYBER PAKHTUNKHWA PESHAWAR**

[Signature] 25/8/15



DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

No: 11501 /Personnel/Promotion
Dated Peshawar 05/11/2015.

(16)

To:

The Secretary to Government of Khyber Pakhtunkhwa
Health Department, Peshawar.

Subject:

PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR
(MINISTERIAL) BS-18 IN THE HEALTH DEPARTMENT.

Dear Sir,

Kindly refer to your Letter No.SOH-III/10-4/2014(Minutes/Assistant Director)
dated 28th October, 2015.

Para wise replies to the observations of the Government of Khyber Pakhtunkhwa
Establishment Department as contained in their letter No.SO (PSB) ED/1-8/2015/P-509 dated
14/10/2015 are submitted as under:-

- i. Copy of the budget book showing the sanctioned strength of Assistant Director (BS-17) during the current financial year 2015-16 is enclosed at Annexure-I. In fact four posts of Assistant Directors (BS-17) had been reserved for promotion of the ministerial establishment to be filled on seniority-cum-fitness basis vide Government of Khyber Pakhtunkhwa Health Department Letter No.SO(ME)H-IV/6-3/2001, dated 01/02/2002 at Annexure-II. Since approved service rules were available for promotion to the post of Assistant Director for ministerial Establishment, promotion case was accordingly put up before the Departmental Promotion Committee vide Working Paper at Annexure-III, wherein three Senior most Officers of the Ministerial Establishment were cleared for promotion vide minutes of the meeting at Annexure-IV which were further notified vide Government of Health Department Notification No.SO(Reg)10-4/99/2002 dated 28/6/2002 at Annexure-V. This is pertinent to mention here that one Officer of the ministerial establishment viz: Mr.Tila Muhammad was already promoted vide Government of Khyber Pakhtunkhwa Health Department Notification No. SOH-III/10-4/99, dated 17/11/2000 at Annexure-VI against the sanctioned post of Assistant Director created during the financial year 1992-93 at Annexure-VII. The said posts were, however, later on included in the Health Management service rules during the year 2008, at Annex-VIII.
- ii. The requisite certificate has been incorporated in the PSB-II Proforma at S. No. 3 certificate portion.
- iii. Complete set of service rules is annexed at Annexure-IX.
- iv. The Budget book page of the current financial year reflecting the post attached at Annexure-I
- v. Certificate regarding single Officer in the Cadre has been incorporated in the end of the PSB-II Proforma as desired.
- vi. The whole marks of PERs earned by the Officer in BS-17 has been divided by 12 ½ years by revising the proforma.
- vii. The Officer was re-appointed in BS-12 vide Directorate Health Services, Office Order bearing endorsement No.13001-03/Admn: dated 04/6/1980 at Annexure-X and he will have to retire from service on attaining the age of superannuation.

ATTESTED

[Handwritten signature]

[Handwritten signature]
DIRECTOR GENERAL HEALTH SERVICES, KHYBER
PAKHTUNKHWA PESHAWAR.



(16)
(17)

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

TO WHOM IT MAY CONCERN

Certified that the post of Assistant Director held by Mr. Muhammad Jamil in the Directorate General Health Services, Khyber Pakhtunkhwa Peshawar is single cadre post.


6/11/15
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

ATTESTED



ITL NO (19)

710
H - (18)

HEALTH DEPARTMENT
(Meeting of PSB held on 18.02.2016)

SUBJECT:- PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR (MINISTERIAL) BS-18.

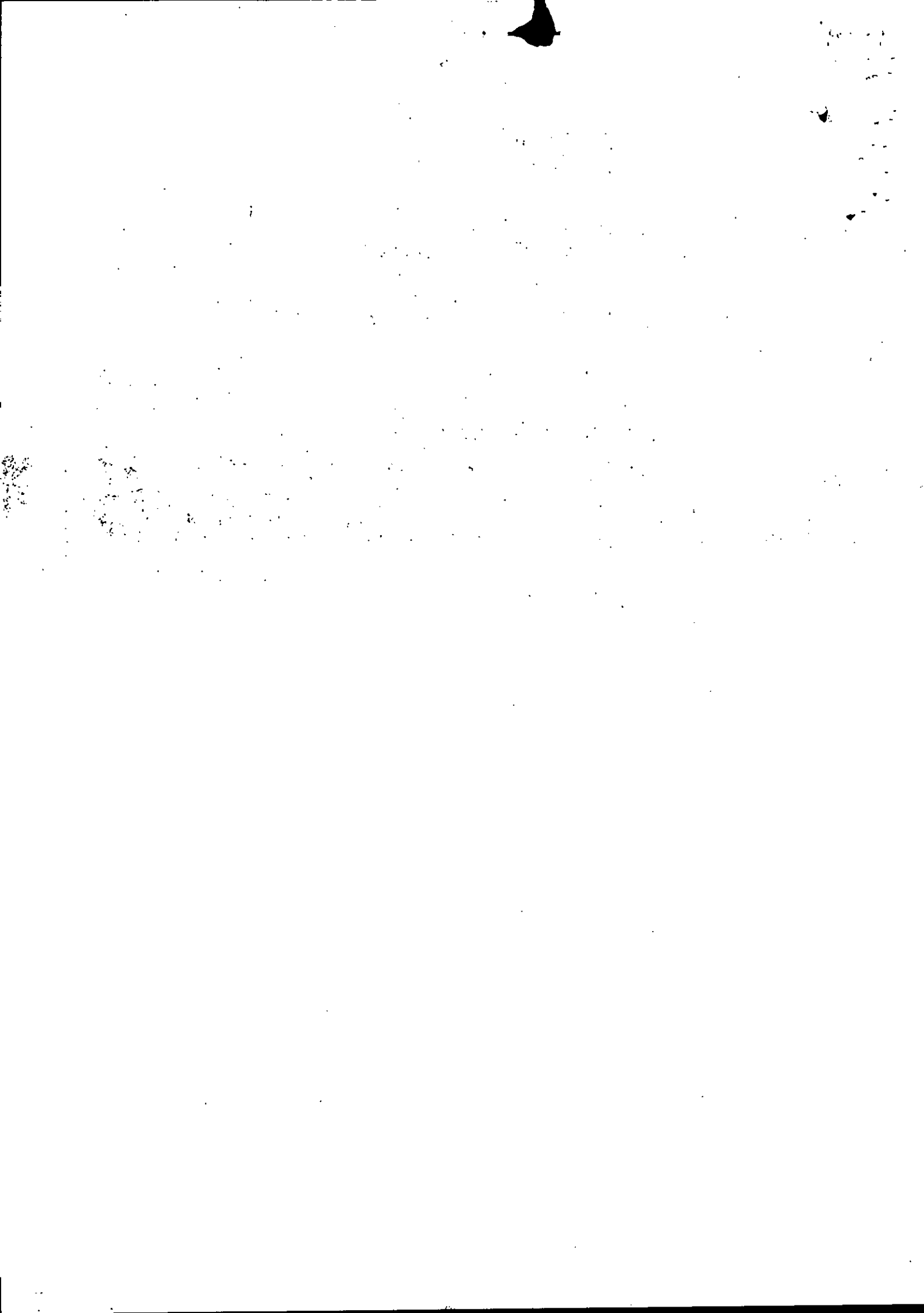
The Board considered the subject working paper and observed that the post holder officer has earned 88.80 marks out of 100 which shows that he is competent and efficient officer working in the office of Director General Health Services for the last 40 years. The Board observed that there were many issues/irregularities in the office of Director General Health Services which remained unattended since long and the Secretary Health was compelled to take over the record by himself for further necessary action if he is so efficient officer then why he did not redress all these issues well in time.

The Board directed Health department to resubmit the case after doing necessary home work.

Attested
22/2/16
17

CONFIDENTIAL

ATTESTED
B





GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 17th July, 2017

1000
I - 19

NOTIFICATION.

No. SOH-III/8-117/2017. The Competent Authority is pleased to accord sanction to the grant of leave encashment of 365 days in lieu of LPR as admissible to Mr. Muhammad Jamil, Assistant Director BS-17, Directorate General, Health Services, Khyber Pakhtunkhwa, Peshawar under the Revised Leave Rules 1981.

2. The officer shall stand retired from Govt. Service w.e.f. 30-08-2017 on attaining the age of superannuation (i.e. 60 years).

**Secretary to Govt. of Khyber Pakhtunkhwa
Health Department**

Endst No. of even No and Date.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (I.T) Health Department.
4. PS to Secretary Health, Khyber Pakhtunkhwa.
5. Officer concerned.

ATTESTED

(Muhammad Tariq)
Section Officer-III

The Secretary to Government of

Khyber Pakhtunkhwa Health Department

Peshawar.

Through:

PROPER CHANNEL

Subject:

PRO FORMA PROMOTION AS DEPUTY DIRECTOR (MINISTERIAL)

BPS-18

Dear Sir,

I have the honor to state that my promotion case to the post of Deputy Director Ministerial was submitted to your Department on 25.08.2015, and after clearance of the all the observations of the Establishment Department, the same was put before the Departmental Selection Board on 18.02.2016.

The promotion case was, however, returned with the following observations:-

"The board considered the working paper and observed that the Panelist officer has earned 88.80 marks out of 100 which shows that he is competent and efficient officer and working in the office of DGHS for the last 40 years. The board observed that there is many issues in the office of the DGHS which remained unattended since long and the Secretary Health was compelled to take over the record by himself for further necessary action. If he is so efficient officer then why he did not redress all the issue well in time.

The board directed Health Department to resubmit the case after doing necessary home work.

This is pertinent to mention that after consideration of my case by the departmental selection board four officers of the Directorate General Health Services viz: Dr. Tahir Nadeem, Dr. Khalid Iqbal, Dr. Shams ul Haq & Mr. Fareedullah Shah have been promoted to BS-20 & BS-18 respectively without raising the observations as has been made in my case vide Govt. Notifications (copies attached).

That time and again I requested for my promotion to the post of Deputy Director (Ministerial) (BPS-18) but of no avail and as such I got retired from service vide order 30.8.2017 (Ministerial) (BPS-18) but of no avail and as such I got retired from service vide order 30.8.2017 with out availing the benefit of promotion to the post of Deputy Director Ministerial (BPS-18).

It is therefore most humbly requested that I may be granted/allowed pro forma promotion to the post of Deputy Director (Ministerial) (BPS-18) w.e.f. 1.7.2014 and obliged.

Dated: 27.12.2017

ATTESTED

ATTESTED

Sincerely Yours,
Muhammad Jamil
Assistant Director DGHS, Khyber Pakhtunkhwa,

Peshawar.

5-20

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2018

Muhammad Jamil

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

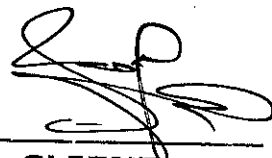
Health Department

(RESPONDENT)
(DEFENDANT)


I/we Muhammad Jamil

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated, 09 / 04 / 2018

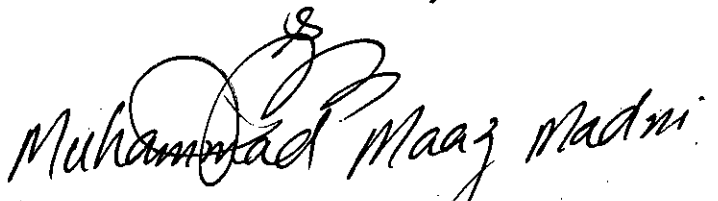


CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391
bile No.0345-9383141


Muhammad Maaz Madni
Advocate

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal No. 504 of 2018

Muhammad JamilAppellant

Versus

Govt. of Khyber Pakhtunkhwa and othersRespondents

PARAWSIE COMMENTS ON BEHALF OF RESPONDENTS NO-2 & 5.


Respectfully Sheweth,

Preliminary Objections:-

1. That the Applicant has got neither cause of action nor 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 the 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 liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.

ON FACTS

1. Para No. 1 pertains to record, hence no comments.
2. Para No. 2 pertains to record, hence no comments.
3. Para No. 3 pertains to record, hence no comments.
4. Para No. 4 pertains to record, hence no comments.
5. Para No. 5 is incorrect. The subject promotion case of the petitioner from Assistant Director BS-17 to Deputy Director BS-18 was taken up with Establishment Department for placement before Provincial Selection Board (PSB) which was returned to Health Department by Establishment Department vide letter No. SO(PSB)ED/1-8/2015/P-509 dated 04.03.2016 assigning reason as a lot of discrepancies/irregularities were found in his case. Had he been fit for promotion, the PSB would have considered the


13/11/2019

petitioner for promotion. Moreover, to determine suitability of an officer is the mandate of PSB not that of Health Department. Minutes of PSB highlighting the subject case of the petitioner is attached (**Annex-I**). It is pertinent to mention that before the subject promotion case could be taken up with Establishment Department again, the officer concerned got retired from service and hence has no legal footing to claim promotion. Furthermore, his writ petition (W.P No. 1991-P/2016) in Peshawar High Court Peshawar has also been dismissed in its judgment dated 30-05-2016 rendering his existing appeal as time barred (**Annex-II**).

6. Para No. 6 Pertains to record hence no comments.

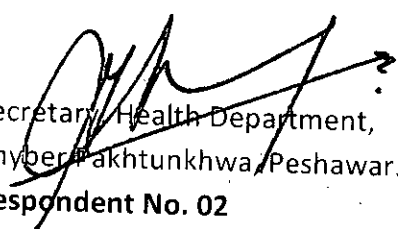
ON GROUNDS

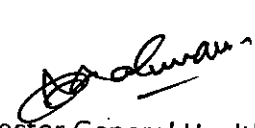
- A. Para-A As explained at Para No. 5 above and Para No. 6 of the Appeal of the Appellant, is crystal clear, hence no comments.
- B. Para-B Pertains to record hence no comments.
- C. Para-C Pertains to record hence no comments.
- D. Para-D Pertains to record hence no comments.
- E. Para-E Pertains to record hence no comments.
- F. Para-F The promotion was properly prepared as per rules and regulations but not recommended by Provincial Selection Board in its meeting 18-02-2016.
- G. G. Para-G Pertains to record hence no comments.
- H. Para-H Pertains to record hence no comments.

It is submitted that the requisite working paper of Assistant Director BS-17 to Deputy Director BS-18 was prepared by Health Department and accordingly taken up with Establishment Department for consideration before PSB being competent forum and hence the role of DGHS/Secretary Health does not arise and nor valid.

PRAYER:

It is therefore, most humbly prayed that on acceptance of comments, the instant appeal may very graciously be dismissed with cost.


Secretary, Health Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 02


Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 05

Vetted subject for necessary correction, attachment of annexures and affidavit.

13/11/2019

CONFIDENTIAL
IMMEDIATE



GOVERNMENT OF KHYBER PAKTHUKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-8/2015/P-509
Dated Peshawar, the 04.03.2016

To

The Secretary to
Government of Khyber Pakhtukhwa,
HEALTH DEPARTMENT

SUBJECT: **MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD**
HELD ON 18.02.2016.

PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF
DEPUTY DIRECTOR (MINISTERIAL) BS-18.

Dear Sir,

I am directed to refer to Health Department letter No SOH-III/10-4/2014(Minutes/Assistant Director) dated 07.12.2015 on the subject and to forward herewith an extract of **item No (19)** of the minutes/recommendations of the meeting of Provincial Selection Board held on **18.02.2016** for further necessary action.

Yours faithfully


(AMANAT ULLAH QURESHI)
SECTION OFFICER (PSB)

Encl: As Above
Endst. of even No. & date.

A copy is forwarded to the Section Officer (III), Govt of Khyber Pakhtukhwa, Health Department. He is requested to depute his representative to collect working papers from this office immediately.

SECTION OFFICER (PSB)

IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

107

No. SO(PSB)ED/ 1-1/2016/(1)
Dated Peshawar, the 12.02.2016

To

1. The Additional Chief Secretary,
Government of Khyber Pakhtunkhwa,
Planning & Development Department.
2. The Senior Member,
Board of Revenue, Khyber Pakhtunkhwa

L.No. 1155
Date 13.2.16
Secretary Health

SUBJECT: - MEETING OF THE PROVINCIAL SELECTION BOARD.

Dear Sir,

I am directed to refer to the subject and to say that meeting of Provincial Selection Board will be held on 17.02.2016 at 1000 hours under the chairmanship of Chief Secretary, Khyber Pakhtunkhwa in the Conference Room of Chief Secretary, Khyber Pakhtunkhwa. Agenda of the meeting is enclosed herewith.

2. You are requested to kindly make it convenient to attend the meeting.

Yours faithfully,

(AMANAT ULLAH QURESHI)
SECTION OFFICER (PSB)

Endst. of even No. & date.

A copy is forwarded to: -

1. The P.S to Chief Secretary, Khyber Pakhtunkhwa.
2. The P.S to Secretary Establishment Department.
3. The P.S to Special Secretary (R) Establishment Department.

SECTION OFFICER (PSB)

dst. of even No. & date.

copy is forwarded to: -

- 1. The Secretary to Govt. of Khyber Pakhtunkhwa, Information Department with reference to item No. 8 of the agenda (Extract enclosed).
- 2. The Secretary to Govt. of Khyber Pakhtunkhwa, PHE Department with reference to item No. 9 of the agenda (Extract enclosed).
- 3. The Secretary to Govt. of Khyber Pakhtunkhwa, Industries Department with reference to items No. 10 & 11 of the agenda (Extract enclosed).
- 4. The Secretary to Govt. of Khyber Pakhtunkhwa, Health Department with reference to items No. 12 to 19 of the agenda (Extract enclosed).

They are requested to kindly attend meeting of the PSB to be held on 17.02.2016 at 1000 hours in the Conference Room of Chief Secretary, Khyber Pakhtunkhwa. They are further requested to bring synopsis of PERs, original PER files and other service record of the officers concerned for perusal of the Board.


SECTION OFFICER (PSB)

A copy is forwarded to: -

- 1. PA to Additional Secretary Regulation, Establishment department.
- 2. PA to Deputy Secretary (R-I)/(R-II)/(R-III) Establishment Department.
- 3. The Section Officer-(E-I), Establishment Department with reference to items No. 1 to 5 of the agenda (Extract Enclosed) and item No. 12 regarding grant of BS-21 on Meritorious Services to the Teaching Cadre professor with the request that Health

EXTRACT OF ITEMS NO. 12 TO 19 OF THE AGENDA
(HEALTH DEPARTMENT)

Item No	DESCRIPTION OF CASE
12	Grant of BS-21 on Meritorious Services to the Teaching Cadre Professors in Health Department.
13	Notional promotion of Dr. Muhammad Nawaz to the post of member of Service in Management Cadre BS-20 in pursuance of Peshawar High Court Judgment dated 17.06.2015
14	Promotion of Member of Health Management Cadre doctors from BS-19 to BS-20 with retrospective effect in pursuance of Court Judgments.
15	Proforma promotion in respect of Dr. Sardar Muhammad Ex- Principal Medical Officer BS-19 to the post of Chief Medical Officer BS-20 in pursuance of Peshawar High Court Judgment dated 13.05.2015.
16	Promotion of Assistant Professor Physiology BS-18 to the post of Associate Professor Physiology BS-19 in SMC Swat.
17	Promotion of Assistant Professor Paediatric BS-18 to the post of Associate Professor Paediatric BS-19 in SMC Swat
18	Promotion of Drug Inspector BS-17 to the post of Senior Drug Inspector BS-18.
19	Promotion of Assistant Director BS-17 to the post of Deputy Director (Ministerial) BS-18

Annex - E

33

IN THE PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'

FORM OF ORDER SHEET

Date of Order	Order or other proceedings with signature of the Judge(s)
1	2
30.5.2016	<p data-bbox="497 675 869 714"><u>W.P. No.1991-P/2016 with I.R.</u></p> <p data-bbox="497 743 598 775"><u>Present:</u></p> <p data-bbox="651 775 981 839">Mr. Muhammad Arif Jan, Advocate, for the petitioner.</p> <p data-bbox="769 873 813 895">***</p> <p data-bbox="497 948 1316 1197"><u>SYED AFSAR SHAH, J.-</u> Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Muhammad Jamil, the petitioner, who is Assistant Director in the Health Department has made a prayer that:-</p> <p data-bbox="646 1224 1236 1678"><i>"On acceptance of this writ petition, the respondent may graciously be directed to act in accordance with law and the impugned order dated 12.05.2016 may kindly be declared illegal, unlawful based on mala fide intentions thus to be set aside and the petitioner being eligible/entitled for the post of Deputy Director (Ministerial Cadre) BS-18 may kindly be promoted in the best interest of justice".</i></p> <p data-bbox="662 1728 750 1757">Heard.</p> <p data-bbox="507 1791 1316 1825">2- Admittedly, the petitioner is a civil servant. Through the</p>

A

ED

instant constitutional petition, he has challenged his transfer and has also made a prayer for his promotion to the post of Deputy Director (BS-18). There is no cavil with the proposition that dispute with respect to the transfer of a civil servant falls within the term and condition of a civil servant, which could not be challenged by invoking constitutional jurisdiction of this Court.

So far as the request of the petitioner for his promotion to the rank of Deputy Director is concerned, it has also got close nexus with the term and condition of service.

3- When confronted with the situation, learned counsel for the petitioner was not in a position to controvert the above legal aspect of the case and such being the position, we would dismiss the petition with the observation that the petitioner for the redressal of his grievances may adhere to the proper forum, if so advised.

Announced
Dated: 30.5.2016.
T.Shah

sd/- J. Shad Qureshi
sd/- syed Afsab Shah

JUDGE

J
J

28288
13-06-16
9P
13-06-16
8:00
13-06-16
13-06-16
11

JUDGE

CERTIFIED TO BE TRUE COPY.

Examined
Peshawar High Court, Peshawar
Registered under the Act of 1973
The Oath-taking Statute of Order 1984

13 JUN 2016

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 822 /ST

Dated 18/05 / 2021

To


The Secretary Health Department ,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 504/2018, MR. MUHAMMAD JAMIL.

I am directed to forward herewith a certified copy of Judgement dated 02.04.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

504/2018

M. Jamil vs Govt

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

In Respondent's
DDA

Time based
condonation
of delay
each day not
explained

PRESENT

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

Civil Petition No. 290 of 2018

(Against the judgment dated
16.01.2018 of the KP Service Tribunal,
Abbottabad passed in Service Appeal
No. 720/2012)

Mst. Memoona Bibi

Petitioner(s)

Versus

**Secretary Elementary & Secondary Education
Department, Govt. of KPK, Peshawar & others**

Respondent(s)

For the Petitioner(s)

: Mr. Nazir Ahmad Bhutta, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s)

: Not Represented

Date of Hearing

: 11.11.2019

ORDER

Gulzar Ahmed, J. The petitioner has remained unauthorizedly absent. Pursuant to such absence, she was proceeded against and ultimately removed from service on 24.01.2011. She filed a departmental appeal on 15.02.2011 and then filed a writ petition in the learned Peshawar High Court on 15.10.2011. The writ petition was treated to be an appeal and transmitted to the Khyber Pakhtunkhwa Service Tribunal for its decision in accordance with law. The petitioner, in the appeal before the Service Tribunal, filed an application for condonation of delay. Such application of the petitioner was considered and it was found that the same did not contain sufficient cause and delay of 8 months was not explained, more particularly, each day's delay was not explained and mere submission that petitioner was pursuing a

ATTESTED

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

writ petition on wrong advice of a counsel was considered not enough to justify the delay. The service appeal of the petitioner was ultimately dismissed as time barred.

2. Learned ASC for the petitioner states that no regular inquiry was conducted in the case. We have asked him to explain the absence period but except for saying that she was in the family way nothing more was said by the learned ASC nor anything in this regard was shown.

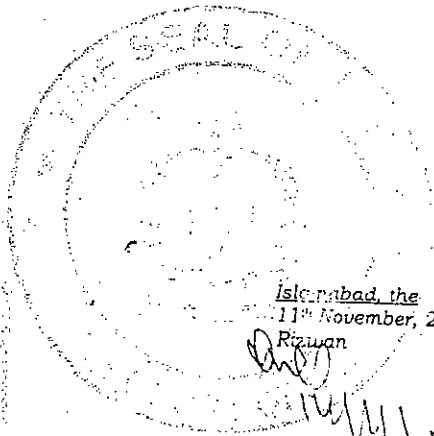
3. Having heard the learned ASC for the petitioner and going through the record of the case including the impugned judgment of the Tribunal we find that no interference in the impugned judgment is required, *moreso*, when no substantial question of law of public importance in terms of Article 212(3) of the Constitution is raised. The petition is, therefore, dismissed and leave refused.

Sd/-J

Sd/-J

Certified to be True Copy

Mehal 5/12/2019
 Court Associate
 Supreme Court of Pakistan
 Islamabad



Rizwan
 Islamabad, the
 11th November, 2019