

Form- A

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1146/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/07/2022	<p>The appeal of Mr. Umar Hayat presented today by Mr. Muhammad Bashir Khan Wazir Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on . Parcha peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p>

Appellant has impugned two separate orders against different cause of action i.e. against demotion order dated 21.10.2021 and dismissal order dated 03.12.2021. Appellant made two separate departmental appeals against both the orders. Therefore, the appeal is returned to the counsel for the appellant with the observations that the appellant is required to file two separate service appeals against each order under section-4 and 6 of Service Tribunal Act/rules 1974 and also removing the following deficiencies in the present appeal.

Copy of departmental appeal against the impugned order dated 21.10.2021 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

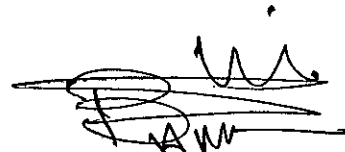
No. 2235 /S.T,

Dt. 21/07 /2022.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M. Basheer Wazir Adv. Peshawar.

Objection removed and resubmitted that the representation against the order dated 21-10-2021 is annexed and separate service appeal NO 195/22 has also been submitted which is pending before the Honorable Tribunal and now the present service appeal against the impugned order dated 03-12-2021 is filed.

  
AW

21/07-2022

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title:

Umair Hayat vs Brent

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <u>Bashir Khan</u>	/	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	/	
3	Whether appeal is within time?	/	
4	Whether the enactment under which the appeal is filed mentioned?	/	
5	Whether the enactment under which the appeal is filed is correct?	/	
6	Whether affidavit is appended?	/	
7	Whether affidavit is duly attested by competent Oath Commissioner?	/	
8	Whether appeal/annexures are properly paged?	/	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	/	
10	Whether annexures are legible?	/	
11	Whether annexures are attested?	/	
12	Whether copies of annexures are readable/clear?	/	
13	Whether copy of appeal is delivered to AG/DAG?	/	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	/	
15	Whether numbers of referred cases given are correct?	/	
16	Whether appeal contains cutting/overwriting?	/	
17	Whether list of books has been provided at the end of the appeal?	/	
18	Whether case relate to this court?	/	
19	Whether requisite number of spare copies attached?	/	
20	Whether complete spare copy is filed in separate file cover?	/	
21	Whether addresses of parties given are complete?	/	
22	Whether index filed?	/	
23	Whether index is correct?	/	
24	Whether Security and Process Fee deposited? On	/	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	/	
26	Whether copies of comments/reply/rejoinder submitted? On	/	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On	/	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Bashir Khan adv.

Signature:

[Signature]

Dated:

20-7-2022

14

# بعدالت سدس سٹیشن سٹوٹل سٹی کے

B.C 29-2053  
0333 9732119

2022 پنجاب CNMC 111013685365 مورخہ

مقدمہ  
دعویٰ  
جرم  
مقام بنام ٹوکن  
محمد عیاض  
gamal-bashirwaziradv@gmail.com

## باعث تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کاروائی متعلق  
آن مقام کے اتر آگیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
میں صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لایا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ  
پروا خستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

TESTED

المرقوم 20 \_\_\_\_\_ ماہ 7 20

العاب \_\_\_\_\_ واہ العبا

مقام کے لئے منظور ہے۔

Handwritten signature and initials.

Handwritten signature.

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR**

Service Appeal No 1146 /2022

Umar Hayat.....Appellant

**VERSUS**

Govt of KPK & others ..... Respondents

**INDEX**

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Service Appeal	-	1-4
2.	Affidavit	-	5
3.	<b>Copy of the Notification</b>	A	6-7
4.	<b>Copy of Notification</b>	B	8
5.	<b>Copy of Impugned Order dated 03.12.2021</b>	"C"	9
6.	<b>Copy of the representation and rejected order</b>	"D"	10-18
7.	Wakalat Nama		19

Through: ~~Appellant~~

  
**(BASHIR KHAN WAZIR)**

Advocate,  
High Court, Peshawar

Dated:- 20.07.2022

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR**

Service Appeal No \_\_\_\_\_/2022

Umar Hayat S/o Ghulam Nabi Khan, Sub Engineer (BPS-16) Resident  
of House No 13, near Govt Girls College Club Road Nowshera

.....Appellant

**V E R S U S**

1. Govt of KPK through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa Peshawar
2. Public Health Engineering Department through Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. Chief Engineer (Center) Public Health Department, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974  
AGAINST THE IMPUGNED ORDER DATED 03.12.2021  
WHICH THE APPELLANT WAS PLEASED TO  
IMPOSED MAJOR PENALTY OF DISMISSAL FROM  
SERVICE, AS ON THE SAME SORT OF ALLEGATIONS  
THE APPELLANT WAS PUNISHED, WHILE  
DOWNGRADED FROM S-17 TO BPS-16 AND  
THEREAFTER THE PREVIOUS IMPUGNED ORDER WAS  
ISSUED, AGAINST WHICH THE DEPARTMENTAL  
APPEAL WAS REFERRED WHICH WAS REGRETTED  
BY THE COMPETENT AUTHORITY ON DATED  
07.07.2022.**

**Prayer in Appeal:**

On acceptance of this Appeal, Impugned Order  
Dated 03.12.2021 which the Appellant was dismissed  
from service by Respondent No 3 may kindly be set  
aside and the Appellant may please be reinstated /  
restored into his service with all back benefits.

**Respectfully Submitted:-**

The Appellant humbly submits as under:-

1. That the Appellant is a Law abiding citizen of Pakistan  
and is entitled for all the rights guaranteed by the  
Constitution of Islamic Republic of Pakistan, 1973.
2. That briefly stated the fact relevant for the purpose of this  
petition are that, the Appellant was appointed as Sub

Engineer (BPS-16) in the Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar on 24.11.1984 and since then, the Appellant is performing his duty with due diligence

- 3. That the Appellant was promoted to the post of Assistant Engineer Grade DO (BPS-17) on regular basis on the recommendation of the Departmental Promotion Committee by the competent authority vide notification No. SO(Estt)/PHED/4-53-B/2020 dated 15.12.2020. **(Copy of the Notification is attached as annexure A)**
- 4. That this Notification of Promotion was withdrawn by Respondent No. 1 vide notification No. SO(Estt)/PHED/4-53-B/2020 dated 21.10.2021 on account of plea-bargain with the NAB authorities by the Appellant in respect of illegal / unauthorized purchase of transformers in District Nowshera. **(Copy of Notification is attached as annexure B)**
- 5. That after the issuance of the above mentioned order the Appellant was pleased to demote from BPS-17 to BPS-16 as punishment under the law and the Appellant filed departmental appeal which was pending before the competent authority and without deciding the same the Respondent issued another order, whereby the Appellant was pleased to impose major punishment of dismissal from service vide impugned order dated 03.12.2021. **(Copy of Impugned Order dated 03.12.2021 is attached as annexure C)**
- 6. That after issuance of the above mentioned notification / impugned order dated 03.12.2021, the Appellant filed Appeal / representation against the notification to the competent authority, which was later on regretted by the competent authority vide order dated 07.07.2022. **(Copy of the representation and rejected order are attached as annexure D)**
- 7. That it is pertinent to mention here that the impugned order issued by Respondent No. 3 in the light of the past enclosed transaction in respect of the National Accountability Bureau (NAB), where the Appellant was forced for plea bargain as the Appellant was in the custody of NAB, thereafter while pressurized by the NAB Authority and recorded statement for plea bargain and thereafter the two co-accused in the said reference were acquitted by the NAB Court after recording of proved contra evidence. The benefits of the acquittal was also extended in favour of the Appellant by the Respondents, therefore he has been allowed to continue his service.

- 3
8. That feeling aggrieved from the act of Respondents, having no other adequate and efficacious remedy, approaches this Honourable Tribunal on the following grounds inter-alia:-

**GROUND:-**

- A) That the Appellant is peaceful and law abiding citizen of Islamic Republic of Pakistan and is fully entitled to all the basic and fundamental rights as enshrined in the fundamental law of the state, interpreted and guaranteed by the law of the land.
- B) That the Appellant is well qualified person and having the experience of this post, the respondents with the connivance of each other issued the above mentioned impugned order which is void ab initio.
- C) That the Appellant after his arrest by the NAB authority produced before the competent court and the custody was granted to the NAB authority and during interrogation in the NAB Office, the Appellant was badly tortured and pressurized for making of plea bargain before the Hon'ble Court, however the Appellant due to his mental torture was unable to file appeal before the competent court of law against the said order and the Respondents considered the request of the Appellant and allowed to continue his service.
- D) That the Appellant was promoted by the competent authority on dated 15.12.2020 to BPS-17 and the said position was duly actualized by the Appellant, however after sufficient time the said promotion order was withdrawn by the Respondent No 3 and the punishment in respect of the plea bargain has been awarded to the Appellant, the Appellant preferred departmental appeal against the said order and after the expiration of mandatory period the competent authority until unless did not pass any order.
- E) That the competent authority while issued the order demotion in the light of past and close transaction and subsequently the impugned dismissal order has been issued which is the violation of Article 13 of the Constitution of Islamic Republic of Pakistan 1973, as per Article 13 protection against double punishment and self-incrimination has been restricted, the Hon'ble Apex Courts rendered reported judgment of 2004 PLC SC 959 and it is held that no employee could be punished twice and in the said case employee was punished for his past punishment awarded to him, therefore the competent authority violated the said article and awarded two punishment to the Appellant, which is illegal, unlawful and without lawful authority and is liable to be declare so.



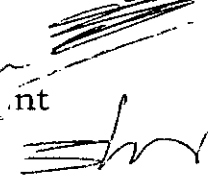
- F) That it is well established principal of the Apex Court that an employee should not be vexed twice for the same offence, similarly once the competent authority demoted the Appellant from BPS-17 to BPS-16, thereafter the subsequent dismissal order is against the law, rules, policy and constitution mandate.
- G) That as per the policy guide lines it is obligatory upon the competent authority to issue the dismissal order in such manners provided under the rules and policy according to which the Appellant has been dismissed in the light of plea bargain order which is the past and close transaction due to personnel grudges, which is illegal unlawful without lawful authority.
- H) That the fundamental right of the Appellant has blatantly violated by the Respondents and the Appellant have been discriminated and has been denied his due rights under the Constitution of Islamic Republic of Pakistan, 1973.
- I) That any other ground not raised here specifically may graciously be allowed to be raised at the time of arguments.

**PRAYER:-**

It is, therefore, most humbly prayed that, **On acceptance of this Appeal, impugned Order Dated 03.12.2021 vide which the Appellant was dismissed from service by the Respondent No 3 may kindly be set aside and the Appellant may please be reinstated / restored his service with all back benefits.**

Other relief, not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.

Throu

Appellant  
  
(BASIM KHAN WAZIR)  
Advocate,  
High Court, Peshawar

Dated:- 07.2022

**CERTIFICATE:**

It is certified that the subject like service appeal has earlier been filed before Hon'ble Bench:

  
**DEPONENT**

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA PESHAWAR**

5

Service Appeal No. \_\_\_\_\_/2022.

**Umar Hayat.....Appellant**

**VERSUS**

**Govt of KPK & others..... Respondents**

**AFFIDAVIT**

I, Umar Hayat S/  
Resident of House No  
Nowshera, do hereby s  
contents of the accomp  
the best of my knowlec  
from this Hon'ble Court.

Mhulam Nabi Khan, Sub Engineer (BPS-16)  
3, near Govt Girls College CLulb Road  
I solemnly affirm and declare on oath that the  
ing **Service Appeal** are true and correct to  
and belief and nothing has been concealed

**DEPONENT**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the December 15, 2020

Annex

**NOTIFICATION**

**No. SO(Ext)/PHED/4-13-11/2020** The competent authority, on recommendations of the Departmental Promotion Committee, is pleased to promote the following acting charge SDOs/Diploma Holder/B.Tech (Hons) Degree holder Sub Engineers (BPS-16) of the Public Health Engineering Department to the posts of Assistant Engineers/Assistant Design Engineers/Sub Divisional Officers (BPS-17) on regular basis, with immediate effect:-

**Acting Charge SDOs/Diploma Holder Sub Engineers**

- i. Mr. Umar Hayat
- ii. Mr. Muhammad Ali
- iii. Mr. Muhammad Riaz
- iv. Mr. Shahid Saeed
- v. Mr. Alla-ud-Din
- vi. Mr. Anwar Khan

**B.Tech (Hons) Degree Holder Sub Engineer**

- i. Mr. Hazrat Muhammad

2. The officers, on promotion, will remain on probation for a period of one year in terms of Rule-15 of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. In order to actualize their promotion, the following postings/transfers/adjustments are made henceforth:-

S.No	Name	From	To	Remarks
1.	Mr. Umar Hayat, BPS-16	SDO (OPS) PHE Sub Division FR Bannu/Lakki Marwat	SDO (BPS-17) PHE Sub Division FR Bannu/Lakki Marwat on regular basis	Against the existing vacancy
2.	Mr. Muhammad Ali, BPS-17 (acting charge)	SDO (BPS-17 acting charge) PHE Sub Division Swat	SDO (BPS-17) PHE Sub Division Swat on regular basis	Against the existing vacancy
3.	Mr. Muhammad Riaz, BPS-17 (acting charge)	SDO (acting charge) PHE Sub Division Dargal Malakand	SDO (BPS-17) PHE Sub Division Dargal Malakand on regular basis	Against the existing vacancy
4.	Mr. Shahid Saeed, BPS-17 (acting charge)	SDO (acting charge) PHE Sub Division Balakot Mansehra	SDO (BPS-17) PHE Sub Division Mansehra on regular basis	Against the vacant post
5.	Mr. Alla-ud-Din, BPS-17 (acting charge)	SDO (acting charge) PHE Sub Division No.2 Abbottabad	SDO (BPS-17) PHE Sub Division No.2 Abbottabad on regular basis	Against the existing vacancy
6.	Mr. Anwar Khan, BPS-16	Sub Engineer PHE Division Mansehra	SDO (BPS-17) PHE Sub Division Balakot Mansehra on regular basis	Vice S # 4
7.	Mr. Hazrat Muhammad, BPS-16	SDO (OPS) PHE Sub Division Sheringal Dir Upper	SDO (BPS-17) PHE Sub Division Sheringal Dir Upper on regular basis	Against the existing vacancy

SECRETARY  
PHE DEPARTMENT

P.T.O

Att  
R

9


9

**Order No. 50(ESTT)/PHE/D/4-153-9/2020 Dated Peshawar, the December 15, 2020**

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineers PHE concerned.
5. Executive Engineer PHE concerned.
6. District Accounts Officer concerned.
7. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
8. PS to Secretary PHE Department Khyber Pakhtunkhwa.
9. Officers concerned.
10. Office Order / Personal Files.

7

  
**SECTION OFFICER (ESTT)**  
15.12.2020

Atc





GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the October 21, 2021

annexe

NOTIFICATION

No.SO(Estt)/PHED/4-53-B/2020: Consequent upon his Plea Bargain with NAB Peshawar on account of illegal/unauthorized purchase of Transformers in District Nowshera, the competent authority is pleased to withdraw the promotion of Mr. Umar Hayat, Diploma holder Sub Engineer (BPS-16) to the post of Assistant Engineer/SDO (BPS-17) on regular basis already notified vide this Department notification of even number dated 15-12-2020.

SECRETARY  
PHE DEPARTMENT

Endst: No.SO(Estt)/PHED/4-53-B/2020 Dated Peshawar, the October 21, 2021.

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (Center) PHE Khyber Pakhtunkhwa Peshawar. He (being competent authority) is requested to take further necessary action against the official concerned under Rule-8(a) of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011, which provides that dismiss the government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily. Provided that dismissal in these cases shall be with effect from the date of conviction by a court of law. He is also requested to recover all the emoluments from the officer concerned during the period from the date of conviction till-date.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.
4. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar.
5. Superintending Engineers PHE Bannu.
6. Executive Engineer PHE Bannu.
7. District Accounts Officer Bannu.
8. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
9. PS to Secretary PHE Department Khyber Pakhtunkhwa.
9. Officer concerned.
10. Office Order / Personal File.

SECTION OFFICER (ESTT)

Ate  
K



C (9) 16

ANX

**OFFICE OF THE CHIEF ENGINEER (CENTER)**  
**PUBLIC HEALTH ENGG:DEPTT:KHYBER PAKHTUNKHWA, PESHAWAR**

Ph #091-9217528, E-mail: centrcphed@gmail.com, Plot#40, Sector-B-II, Phase-V, Hayatabad, Peshawar (a/z)

No. 02/1CE-11 /PHE,

Dated Peshawar, the 03/12/2021.

**OFFICE ORDER**

As per recommendation of worthy Secretary to Govt: of Khyber Pakhtunkhwa PHED Peshawar vide his Notification No. SO(Estt)/PHED/4-53-B/2020 dated 21.10.2021, Mr. Umar Hayat, Sub Engineer (BPS-16) attached to the office of Executive Engineer PHE Division Bannu has violated the rules/regulations and involve in plea Bargain with National Accountability Bureau (NAB) Peshawar on account of illegal/unauthorized purchase of Transformer in District Nowshera.

On the basis of these charges/allegations in terms of Section-6 of Khyber Pakhtunkhwa Govt Servant E&D Rules 2011, Mr. Umar Hayat Sub Engineer (BPS-16), is hereby dismissed from the government services of Public Health Engg: Department with effect from 11.12.2015.

/

**Chief Engineer (Center)**

Endst: No 02/1CE-7 /PHE Dated Peshawar the 03/12/2021

Copy forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Chief Engineer (South) PHE Department Peshawar with the request to recover all the emoluments from the officer concerned during the period from the date of conviction till date.
3. The Chief Engineer (East/North) PHE Department Peshawar.
4. The Superintending Engineer PHE Circle Bannu.
5. The Executive Engineer PHE: Division Bannu.
6. The Section Officer (Estt) PHE Department.
7. The District Accounts Officer Bannu.
8. PS to Secretary PHE Department Peshawar.
- ✓ 9. The official concerned.

/ami

**Chief Engineer (Center)**

ATC  
/

To,

**CHIEF SECRETARY,  
Civil Secretariat,  
Khyber Pakhtunkhwa Peshawar**

**Subject:- DEPARTMENTAL APPEAL / REPRESENTATION AGAINST  
THE IMPUGNED ORDER DATED 21.10.2021 AND  
SUBSEQUENT ORDER DATED 03.12.2021 VIDE WHICH  
INITIALLY THE APPELLANT WAS DOWNGRADED /  
DEMOTED FROM BPS-17 TO BPS-16 AND SUBSEQUENTLY  
DISMISSED FROM SERVICE BY THE RESPONDENT NO 3.**

Respected Sir,

1. That the Appellant is the Law abiding citizen of Pakistan and is entitled for all the rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.
2. That briefly stated the fact relevant for the purpose of this petition are that, the Appellant was appointed as Sub Engineer (BPS-) in the Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar on 24.11.1984 and since then, the Appellant is performing his duty with dye diligence.
3. That the Appellant was promoted to the post of Assistant Engineer / SDO (BPS-17) on regular basis on the recommendation of the Departmental Promotion Committee by the competent authority vide notification No. SO(Estt)/PHED/4-53-B/2020 dated 15.12.2020.
4. That this Notification of Promotion was withdrawn by Respondent No 1 vide notification No. SO(Estt)/PHED/4-53-B/2020 dated 21.10.2021 on account of plea-bargain with the NAB authorities by the Appellant in respect of illegal / unauthorized purchase of transformers in District Nowshera.
5. That after issuance of the above mentioned notification / impugned order dated 21.10.2021, the Appellant filed Appeal / representation against the notification to the competent authority vide diary No. 1748 dated 09.11.2021, which is still pending and has not yet been decided.
6. That it is pertinent to mention here that the impugned order issued by the Respondent No 3 in the light of the past enclosed transaction in respect of the National Accountability Bureau (NAB), whereby the Appellant was forced for plea bargain as the Appellant was in the custody of NAB, therefore while pressurized by the NAB Authority and recorded his statement for plea Bargain and thereafter the two co-accused in the said reference were acquitted by the NAB Court after recording of pro and contra evidence. The benefits of the acquittal was also extended in favour

of the Appellant by the Respondents, therefore he has been allowed to continue his service.

7. That the Appellant while aggrieved from the impugned order dated 21.10.2021 forwarded departmental Appeal according to the prescribed rules and the said representation was pending before the competent authority since filing and the meanwhile the Respondents while issued another order vide No. 02/17-11/PHE dated 03.12.2021 whereby the Appellant was dismissed from service w.e.f 11.12.2015.
8. That the Appellant after his arrest by the NAB authority produced before the competent court and the custody was granted to the NAB authority and during interrogation in the NAB Office, the Appellant was badly tortured and pressurized for making of plea bargain before the Hon'ble Court, however the Appellant due to his mental torture was unable to file appeal before the competent court of law against the said order and the Respondents considered the request of the Appellant and allowed to continue his service.
9. That the Appellant was promoted by the competent authority on dated 15.12.2020 to BPS-17 and the said position was duly actualized by the Appellant, however after sufficient time the said promotion order was withdrawn by the Respondent No 3 and the punishment in respect of the plea bargain has been awarded to the Appellant, the Appellant preferred departmental appeal against the said order and after the expiration of mandatory period the competent authority did not pass any order, rather in the meanwhile another order dated 03.12.2021 was issued and the Appellant was awarded major punishment i.e Dismissal from service.
10. That the competent authority while issued the order demotion in the light of past and close transaction and subsequently the impugned dismissal order has been issued which is the violation of Article 13 of the Constitution of Islamic Republic of Pakistan 1973, as per Article 13 protection against double punishment and self-incrimination has been restricted, the Hon'ble Apex Courts rendered reported judgment of 2004 PLC SC 959 and it is held that no employee could be punished twice and in the said case employee was punished for his past punishment awarded to him, therefore the competent authority violated the said article and awarded two punishment to the Appellant, which is illegal, unlawful and without lawful authority and is liable to be declare so.
11. That it is well established principal of the Apex Court that an employee should not be vexed twice for the same offence, similarly once the competent authority demoted the Appellant from BPS-17 to BPS-16, thereafter the subsequent dismissal order is against the law, rules, policy and constitution mandate.



12

12. That as per the policy guide lines it is obligatory upon the competent authority to issue the dismissal order in such manners provided under the rules and policy according to which the Appellant has been dismissed in the light of plea gain order which is the result and close transaction case to personal grudges, which is illegal, unlawful without lawful authority.
13. That the fundamental right of the Appellant has blatantly violated by Respondents and the Appellant has been discriminated and has been denied his due rights under the Constitution of Islamic Republic of Pakistan 1973.

It is, therefore, most humbly requested that, On acceptance of this Appeal, in the original Order Dated 21.1.2021 vide which the Appellant was Downgraded / Demoted from BPS-1 to BPS-10 and subsequently dismissed from service by the Respondent No 3 may kindly be set aside and the Appellant may please be reinstated / restored into his service with all back benefits.

**U.S.A. HANNA**  
W/STO Ghulam N. Khan,  
Sub Engineer (DS-16)  
Resident of House No 13,  
Near Govt Girls College Club  
Road Nowshera  
Cell # 0333-8885911



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT**

No.SO(Estt)/PHED/11-268/2021/PF  
Dated Peshawar, the July 07, 2022

To

Mr. Umar Hayat,  
Ex-Sub Engineer PHED,  
R/O House No.13, Near Govt Girls College,  
Club Road Nowshera

Subject: **DEPARTMENTAL APPEAL/REPRESENTATION AGAINST DISMISSAL FROM SERVICE NOTIFIED VIDE CHIEF ENGINEER (CENTER) PHED VIDE ORDER NO.02/LE-11/PHE DATED 03-12-2021.**

Consequent upon your Plea Bargain with National Accountability Bureau (NAB), Peshawar on account of illegal/unauthorized purchase of Transformers in District Nowshera, the competent authority (Chief Engineer Center PHED), in exercise of the powers conferred under Rule-14 (5) (ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, was pleased to impose the major penalty of "Dismissal from Service", upon you, vide Office Order No.02/CE-1/PHE dated 03-12-2021.

2. AND WHEREAS, you submitted a Departmental appeal/representation against the imposition of the aforesaid major penalty, the appellate authority (Secretary PHED) in terms of Rule 17 (2) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to uphold the order of penalty imposed and reject your appeal/representation.

7/7/22  
**SECTION OFFICER (ESTT)**

ENDST: NO DATE AS ABOVE:

Copy forwarded for information to

1. Chief Engineer (Center) PHE Kh :r Pakht :hwa Peshawar.
2. PS to Secretary PHE Departmen eshawa:

7/7/22  
**SECTION OFFICER (ESTT)**

14

To

**Secretary**  
PHE, Khyber Pakhtunkhwa  
Peshawar

Subject:-

REPRESENTATION AGAINST THE ORDER OF THE  
SECRETARY PHE DEPARTMENT VIDE NOTIFICATION NO  
SO(ESTT/PHED/4-53-B/2021 WITHDRAWING THE  
PROMOTION OF THE APPLICANT FROM (BPS-17) TO  
(BPS-16).

***Respectfully Sheweth:-***

1. *That the applicant was appointed a Sub Engineer (BPS-11) in Public Health Engineering Department NWFP (Now Khyber Pakhtunkhwa) on 24/11/1984.*
2. *That whereafter the competent authority on recommendation of Departmental Promotion Committee promoted the applicant to post of Assistant Engineer/SDO(BPS-17) on regular basis vide notification No SO(Estt)/PHED/4-53-B/2020 dated 15/12/2020.*
3. *That the NAB KP initiated an inquiry against the accused person on the allegation of sub-standard procurement of transformers the applicant was arrested on 25/03/2015 and remained in the custody till 30/03/2015.*
4. *That due to certain physical constrained and serious family problems, the applicant was persuaded and pressurized by*

15/15

*the NAB Authorities to enter into plea bargain of the amount to the tune of Rs. 9,93,747/-.*

5. *That the applicant was asked to write application for plea bargain and requested for his release, which he accordingly did and was also told him to enter into an agreement with the NAB Authorities.*
6. *That on the same date i.e. 30.03.2015, his statement was recorded before the Accountability Court and was released by the Accountability Court vide order dated 30.03.2015.*
7. *That it is pertinent to mention here that the entire proceedings were conducted on 30.03.2015 without recording the confessional statement of the applicant or without informing him of the consequences of plea bargain and without adopting the legal procedure, he was convicted by the Accountability Court.*
8. *That on the similar inquiry for which the applicant was charged, the NAB Authorities simultaneously filed Reference against three officials of Public Health & Engineering Department, Nowshera and ultimately that Reference which was filed in similar inquiry, all the officials and officers of PHED Nowshera on the same set of allegations were acquitted by the Accountability Court-IV, vide order dated*

16 16  
/ /

31.07.2019 and the Reference No. 6/2015 was answered in negative by the Accountability Court-IV.

9. That it is further important to mention here that the case of the applicant is still pending before the august Supreme Court of Pakistan.
10. That the secretary PHE KP issued a notification dated 21/10/2021 withdraw the promotion of the applicant from (BPS-17) to (BPS-13) the applicant is again constrained to file the instant representation, inter alia, on the following grounds:-

**Grounds:-**

- A. That the impugned order of secretary PHE department is illegal, unlawful and without any authority.
- B. That the applicant never committed the offence, as alleged against the applicant, the applicant is innocent in this respect.
- C. That the applicant's thirty years long standing service record is clean and unblemished throughout.
- D. That the applicant was illegally coerced into the plea bargain for a nominal amount and that too without informing him the consequences.

- 17      14  
✓      ✓
- E. *That acquittal of all the other accused by the Accountability Court-IV on similar charges clearly depicts that the investigation and inquiry conducted by the NAB Authorities was defective and could not establish the guilt against any of the accused facing trial.*
- F. *That the applicant served the department for almost 30 years in the service and was condemned unheard and illegally and the impugned order was passed in hasty manner without following the procedure under the E&D rules.*
- G. *That the order of the promotion was in accordance with law by the competent authority on recommendations of the departmental promotion committee, hence the same cannot be withdrawn.*
- H. *That had he been informed by the Accountability Court that if he entered into an agreement with the NAB Authorities, he will be deemed to have been convicted the consequences of conviction he could have joined and faced the trial instead just like other officials and officers of PHED.*
- I. *That in the judgment of Accountability Court-IV dated 31.07.2019, it was held in categorical manner that the prosecution badly and miserably failed to prove the charge*

18 ft.

*against the accused facing trial and acquitted all the other accused facing trial, but due to misleading by the respondents, the applicant is deemed to be convicted.*

*It is, therefore, requested that on acceptance of this representation, the impugned order/notification dated 21/10/2021 may please be set aside, and the order of promotion dated 15/12/2020 may please be upheld.*

Dated:- 03/11/2021

Applicant

Umar Hayat  
Sub Engineer (BPS-16)  
S/o Ghulam Nabi Khan  
R/o House No 13, near  
Government Girls College, Club  
Road, Nowshera Cantt