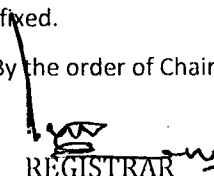

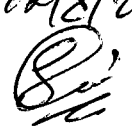


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 408/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.07.2022	<p>The execution petition of Dr. Syed Mufarih Shah submitted today by Mr. Zartaj Anwar Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>26.7.2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman  REGISTRAR</p>
	26 th July, 2022	<p>None for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.</p> <p>Notice be issued to the petitioner and his counsel. Learned AAG has assured that he will coordinate with the respondents to get the judgment implemented and submit implementation report on the next date. To come up for implementation report on 23.09.2022 before <u>S.B.</u></p> <p> (Kalim Arshad Khan) Chairman</p>

*Noted for
12/8/22
*

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

E. P. No. 408/2022

In the matter of
Appeal No.8481/20201
Decided on 18.05.2022

Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar
Mian Kalay Gati Ghari Tehsil and District Mardan
.....(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar & Others.

(Respondents)

INDEX

S. NO	Description of documents	Annexure	Page No
1	Memo of Appeal along with affidavit		1- 3
2	Copy of the appeal and order and judgment dated 18.05.2022	A & B	4-13
3	Copy of the application dated 08.06.2022	C	14-15
4			
5	Vakalatnama		16

[Signature]
Appellant

Through

[Signature]
ZARTAJ ANWAR

Advocate Supreme
Court of Pakistan
Office FR , 3 Forth
Floor Bilour Plaza
Peshawar Cantt.
Cell: 0331-9399185

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

E. P. NO. 408/2022

Khyber Pakhtunkhwa
Service Tribunal

In the matter of
Appeal No.8481/20201
Decided on 18.05.2022

Diary No. 757

Dated 22/7/2022

Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar
Mian Kalay Gati Ghari Tehsil and District Mardan

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat, Peshawar.
3. Director General Health Khyber Road Peshawar.

(Respondents)

**Application for the implementation of the order
and Judgment dated 18.05.2022 in the above
noted service appeal of this Honourable
Tribunal.**

Respectfully Submitted:

1. That the above service appeal was pending before this honourable Tribunal which was decided vide order and judgment dated 18.05.2022.
2. That vide order and judgment dated 18.05.2022 of this honourable Tribunal allowed the appeal and reinstated the appellant on the following terms:

In view of the above, instant service appeal is accepted as prayed for parties are left to bear their own costs file be consigned to the record room".

(Copy of the appeal and order and judgment dated 18.05.2022 is attached as annexure A & B)

3. That the judgment and order of this honourable tribunal was duly communicated to the respondent by the applicant by submitting the application for implementation of the judgment dated 18.05.2022 but they are reluctant to implement the same. (*Copy of the application dated 08.06.2022 is attached as annexure C*)
4. That the respondents are legally bound to implement the order and judgment dated 18.05.2022 of this honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, humbly prayed that on acceptance of this application the order and judgment dated 18.05.2022 of this honorable tribunal be implemented in its true letter and spirit.


Appellant

Through


ZARTAJ ANWAR
Advocate Peshawar

&


IMRAN KHAN
Advocate Peshawar

10 3

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No.8481/20201
Decided on 18.05.2022

Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar
Mian Kalay Gati Ghari Tehsil and District Mardan

.....(Appellant)

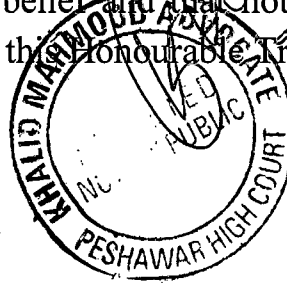
VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar & Others.

(Respondents)

AFFIDAVIT

I, Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O
Gojar Mian Kalay Gati Ghari Tehsil and District Mardan, do
hereby solemnly affirm and declare on oath that the contents
of the above noted application are true and correct to the best
of my knowledge and belief and that nothing has been kept
back or concealed from this Honourable Tribunal.



Dr. Syed Mufarih Shah
Deponent
03009178646
16101-6915934-5

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

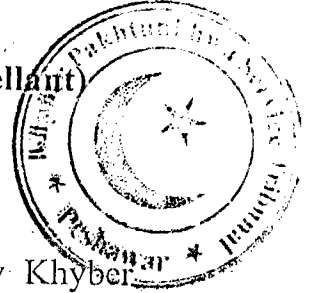
Service Appeal No. 8481/2020

Dirry No. 6742

Dated 10/7/2020

Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar Mian
Kalay Gati Ghari Tehsil and District Mardan

(Appellant)



VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat, Peshawar.
3. Director General Health Khyber Road Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 13.03.2020, whereby the Pro-forma Promotion of the Appellant was rejected, whereas the junior colleague of the appellant was promoted to the post Chief Dental Surgeon BPS-20, against which the departmental Appeal dated 06.03.2020, decided on 13.03.2020 communicated on 10.06.2020, was also rejected by respondents.

Prayer in Writ Petition:

Filed to-day

Registrar

10/7/2020


On acceptance of this appeal the appellant may kindly be considered for pro-forma promotion to the post of Chief Dental Surgeon BPS-20, the appellant may also be awarded all the arrears and back benefits as from dated when his junior was promoted i.e 19.04.2019, the inaction of the respondents by promoting the junior colleague of the appellant on the ground that being on verge of retirement and superseding the present appellant is illegal, unlawful and without lawful authority, or any other remedy which this Hon;able Tribunal deem proper may also be allowed.

Re-submitted to -day
and filed.

Registrar

22/7/2020

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Submitted:

1. That the appellant was initially appointed as Dental Surgeon BPS-17 on 13.03.1988 in the Health Department Khyber Pakhtunkhwa through Public Service Commission Khyber Pakhtunkhwa.
2. That the appellant performed his duty with great zeal and devotion without any complaint whatsoever regarding his performance.
3. That the appellant was promoted to BPS-18 on 11.08.2006 and was further promoted to the post of Principal Dental Surgeon BPS-19 on 25.09.2017.
4. That according to the final seniority list of Principal Dental Surgeon BPS-19 circulated in 2018 in which the present appellant was at serial no 12 and one of his junior colleague namely Dr. Muhammad Tayyab S/O Khalil ur Rehman was at serial no 17 of the final seniority list.. *(Copy of the seniority list is attached as annexure A).*
5. According to seniority list of Principal Dental Surgeon (BPS-19) circulated in 2019 the appellant was ranked at serial number 04, however in the PSB meeting held on 19.04.2019, a junior Colleague of the appellant Dr. Muhammad Tayyab S/O Khalil ur Rehman at serial No 08 was astonishingly promoted to BPS-20 in violation of rules and policy of promotion.
6. That the appellant was eventually issued a report of the provision meeting of PSB minutes 19.04.2019, the report of the minutes of PSB meeting claimed that the appellant had not submitted his PER for the year 2018. The appellant being very eager about his promotion, testifies to have submitted his PER for the year 2018 in a timely manner.
7. That the appellant submitted his departmental appeal to the respondent department on 06.03.2020 for his pro-forma promotion. *(Copy of departmental Appeal is attached as annexure B).*

ATTESTED

8

It is, therefore, prayed that on acceptance of this Service Appeal the Pro-forma promotion may kindly be allowed to the appellant with all consequential benefits!

Syed M. Shah
Appellant

Through

Zartaj Anwar

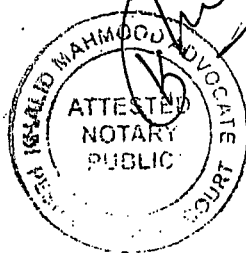
ZARTAJ ANWAR
Advocate Peshawar

Imran Khan

IMRAN KHAN
Advocate Peshawar

AFFIDAVIT

I, Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar Mian Kalay Ghati Ghari Tehsil and District Mardan, do hereby solemnly affirm and declare that the contents of the above service Appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.



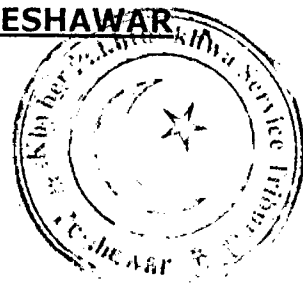
Syed M. Shah
Deponent

Syed M. Shah
ATTESTED

9 ANNEX B
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 8481/2020

Date of Institution ... 10.07.2020
Date of Decision ... 18.05.2022



Dr. Syed Mufarih Shah S/O Syed Muzammil Shah R/O Gojar
Mian Kalay Ghati Ghari Tehsil & District Mardan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Peshawar and two others.
... (Respondents)

Zartaj Anwar,
Advocate ... For appellant.

Muhammad Adeel Butt,
Additional Advocate General ... For respondents.

Salah-Ud-Din ... Member (J)

Rozina Rehman ... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

“On acceptance of this Service Appeal the pro-
forma promotion may kindly be allowed to the
appellant with all consequential benefits.”

2. Brief facts of the case are that appellant was initially
appointed as Dental Surgeon in BPS-17 on 13.03.1988 in the Health
Department through Public Service Commission. He was promoted
to BPS-18 on 11.08.2006 and was further promoted to the post of
Principal Dental Surgeon (BPS-19) on 25.09.2017. He was at Serial

APPROVED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

No.12 of the final seniority list of Principal Dental Surgeon BPS-19 circulated in 2018 while his colleague Dr. Muhammad Tayyab was at Serial No.17. He was then ranked at Serial No.4 in the seniority list circulated in 2019 however, a junior colleague at Serial No.8 was astonishingly promoted to BPS-20 in violation of rules and policy of promotion. He was issued a report of provision meeting of PSB Minutes dated 19.04.2019 wherein the report of Minutes claimed that the appellant had not submitted his PER for the year 2018, whereas, the appellant testified to have submitted the said PER in a timely manner. He, therefore, submitted his departmental appeal for his pro-forma promotion which was decided on 13.03.2020 but the order was communicated to the appellant on 10.06.2020, hence, the present service appeal.

3. We have heard Zartaj Anwar Advocate learned counsel for appellant and Muhammad Adeel Butt, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Zartaj Anwar Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the appellant was not treated in accordance with law and that the respondents failed to follow the law and rules governing promotion, thus, the secured and guaranteed rights of the appellant have been violated. He contended that junior colleague of the appellant was promoted to BPS-20 and the refusal of the same to the present appellant is unlawful, illegal and without lawful authority. It was argued that the appellant worked very hard for 32 years and he also decided to extend his tenure in expectation of promotion as a reward for his countless contributions to the Health

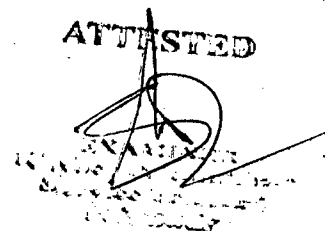
ATTESTED
BY THE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Department but the reversal of the 63 years rule by the court resulted in further misfortune to the appellant as he retired on 01.02.2020 without giving him his right of retiring in BPS-20. He submitted that the appellant was superannuated on 31.12.2019 but still deprived of his promotion on account of the inaction of the respondents and that the appellant was fit and eligible for the post of Chief Dental Surgeon (BPS-20) besides the post was 100% promotion post and there was no legal impediment in processing his case for promotion. He, therefore, requested for acceptance of his service appeal.

5. Conversely, learned AAG contended that Dr. Muhammad Tayyab was at Serial No.8 who was at the verge of retirement and his PERs dossiers were complete, hence, he was considered and promoted by PSB in its meeting held on 19.04.2019, however, the appellant alongwith others were deferred from promotion due to incomplete PERs dossiers in light of Para-V (a) (III) of Khyber Pakhtunkhwa Promotion Policy, 2009. He further submitted that in the meeting of PSB held on 23.09.2019, two most senior Principal Dental Surgeons were recommended for promotion against two vacant posts of Chief Dental Surgeon; the appellant was at Serial No.3, hence, he was not promoted. Lastly, he submitted that the claim of the appellant for notional promotion was not taken up due to non-availability of post till his retirement.


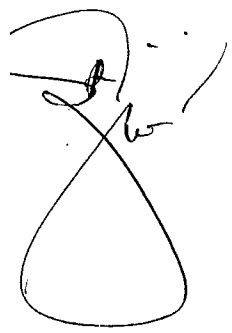
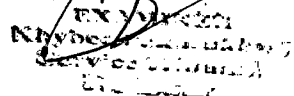
6. Perusal of record would reveal that appellant after qualifying the competitive examination held by Provincial Public Service Commission joined Health Department as Dental Surgeon in BPS-17 on 13.03.1988. He was promoted to BPS-18 on 11.08.2006 and then

ATTESTED

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to BPS-19 on 25.09.2017. Admittedly, a meeting of the Provincial Selection Board was held on 19.04.2019, wherein, Dr. Muhammad Tayyab was recommended for promotion to the post of Chief Dental Surgeon (BPS-20). Admittedly, two posts of Chief Dental Surgeon (BPS-20) of the general cadre were lying vacant and the posts were required to be filled by promotion on the basis of seniority cum fitness from amongst the Principal Dental Surgeons of the general cadre having a minimum of 17 years service in BPS-17 & above. Dr. S.M Arif Shah at Serial No.1 was recommended for promotion besides Dr. Muhammad Tayyab who was at Serial No.8. Dr. M Naeem Ahmad, Dr. Nasrullah Jan, Dr. S. Mufarih Shah i.e. the present appellant, Dr. Akhtar Nawaaz, Dr. Muhammad Azhar and Dr. Qazi Hanif Ur Rehmann were all seniors to Dr. Muhammad Tayyab but all were deferred from promotion by the Board on the sole ground of non-availability of their PERs. There is nothing on file which could show that non-availability of the PERs was ever communicated to the appellant. No action was taken against the present appellant as to why PERs were not submitted on time and in this regard, nothing was produced in black & white in order to show any sort of communication in respect of non-availability of the PERs in between the Department and the appellant. The next meeting of PSB was held on 23.09.2019. Again, two posts of Chief Dental Surgeons of the general cadre were lying vacant and Dr. M. Naeem Ahmad and Dr. Nasrullah Jan were recommended for promotion to the post of Chief Dental Surgeon (BPS-20). After the promotion of Dr. M. Naeem Ahmad and Dr. Nasrullah Jan, appellant was the next officer for promotion to the post of BPS-20 but due to

ATTESTED

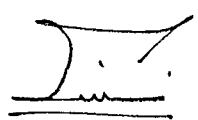
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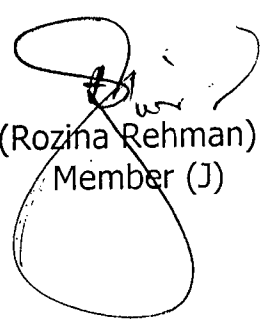
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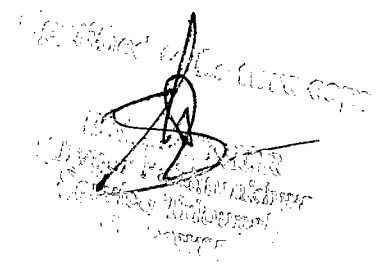
the promotion of a junior colleague i.e. Dr. Muhammad Tayyab, appellant was deprived of his due right. Deferment is neither a punishment nor a final order; as and when the reasons for deferment ceases to exist, the employee is to be promoted from the date when his juniors were promoted. In the instant case, the present appellant was not promoted in the absence of any solid reason and convincing response by the respondents, the claim of the appellant is bonafide and just and he is held entitled for promotion to BPS-20 w.e.f 23.09.2019.

7. In view of above, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
18.05.2022


(Salah-ud-Din)
Member (J)


(Rozina Rehman)
Member (J)



Number of Pages: 2400
Copy: 26
Page: 91
Time: 30
Date of receipt of copy: 03/06/22
Date of receipt of copy: 03/06/22

To,

41 Annex 'C'
The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject: APPLICATION FOR COMPLIANCE OF THE JUDGMENT
& ORDER DATED 18/05/2022 OF HONOURABLE SERVICE
TRIBUNAL PASSED IN SERVICE APPEAL NO. 848/20,
TITLED "DR. SYED MUFARRIH SHAH VERSUS
HEALTH DEPARTMENT".

Respected Sir,

The applicant submits as under:-

1. That the applicant filed an appeal for his Pro-Forma promotion to grade-20, before the Honourable Services Tribunal.
2. That the Honourable Service Tribunal has been gracious enough to allow and accept the appeal of the applicant vide its order and judgment dated 18/05/2022.
3. That the Honourable Service Tribunal has issued directions to Health Department for promoting the applicant to next grade/ grade-20.
4. That there is no legal restriction in implementing the above mentioned judgment and order.

It is therefore, most humbly requested that on accepting the instant application, the applicant may very kindly be Pro-Forma promotion to the next grade in light of order & judgment of the honourable Service Tribunal.

Dated: 08/06/2022

Yours Obediently,


Dr. Syed Mufarrih Shah

Principal Dental Surgeon (Retired)

To,

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

Subject: **APPLICATION FOR COMPLIANCE OF THE JUDGMENT
& ORDER DATED 18/05/2022 OF HONOUABLE SERVICE
TRIBUNAL PASSED IN SERVICE APPEAL NO. 848/20,
TITLED "DR. SAYED MUFARRIH SHAH VERSUS
HEALTH DEPARTMENT".**

Respected Sir,

The applicant submits as under:-

1. That the applicant filed an appeal for his Pro-Forma promotion to grade-20, before the Honourable Services Tribunal.
2. That the Honourable Service Tribunal has been gracious enough to allow and accept the appeal of the applicant vide its order and judgment dated 18/05/2022.
3. That the Honourable Service Tribunal has issued directions to Health Department for promoting the applicant to next grade/grade-20.
4. That there is no legal restriction in implementing the above mentioned judgment and order.

It is therefore, most humbly requested that on accepting the instant application, the applicant may very kindly be Pro-Forma promotion to the next grade in light of order & judgment of the honourable Service Tribunal.

Dated: 08/06/2022

Yours Obediently,


Dr. Syed Mufarrih Shah

Principal Dental Surgeon (Retired)


ATTESTED

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar
Dr. Syed Mufarah Shah

- } For
- } Plaintiff
- } Appellant
- } Petitioner
- } Complainant

VERSUS

Govt of KPK and others

- } Defendant
- } Respondent
- } Accused
- }

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____ *msk*
Accepted subject to the terms regarding fee _____

Im Khan
IMRAN KHAN
Advocate High Court
Mob: 0345-9090648

Zaraj Anwar
ZARAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
BC-10-9851
CNIC: 17301-1610454-5

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

EP No. 408

SB

APPEAL No. of 20²².

Dr. Syed Mufarrah Shah

Appellant/Petitioner

Versus

Through Chief Secy KPK Peshawar.

RESPONDENT(S)

Respondent (1)

Govt of KPK through
Chief Secy KPK Peshawar.

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 23/09/2022 at 9:00 AM.


You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Impl-ment-ation
Report



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of EP
Attached


12-9-22

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No.....

EP No. 408

SB

of 20 22

Dr. Syed Mufarrah Shah

Appellant/Petitioner

Versus

Through Chief Secy Peshawar.

RESPONDENT(S)

Respondent (2)

Govt of KPK through
Secy Health KPK Peshawar.

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 23/09/2022 at 9:00am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Impl-ment-
Report

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of EP
Attached

[Signature] 12/09/2022

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No.

EP No. 408

of 2022

Dr. Syed Mufarrah Shah

Apellant/Petitioner

Versus

Through Chief Secy Peshawar.

RESPONDENT(S)

Respondent (3)

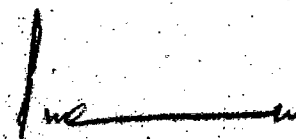
DG Health KPIC Peshawar

Notice to Apellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 23/09/2022 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Impt-ment-
tion
Report



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of EP
Attached