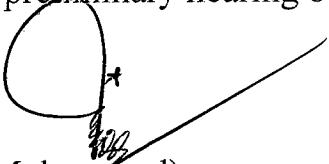



25.10.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents No. 1 to 3 present. Mr. Asif Ali Yousafzai, Legal Advisor for respondents No. 4 to 10 present.

The appeal in hand is yet at pre-admission stage, however has been inadvertently fixed before the D.B, therefore, to come for preliminary hearing before the S.B on 31.10.2022.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

10.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 28.04.2022 for the same as before.



Reader

28.04.2022

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Jaffar Ali Assistant for respondents No.1 to 3 present. Counsel for respondents No.4 to 10 present.

Reply on behalf of respondents No.4 to 10 has already been submitted while representative of respondents No. 1 to 3 relied upon the reply already submitted on behalf of respondents No.4 to 10. To come up for rejoinder, if any, and arguments on 08/10/2022 before D.B.


(Rozina Rehman)
Member (J)

8-7-2022

Due to Holidays of Eid-UI-Azha
the case is adjourned to 25-10-2022


Reader

22.12.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General present. Learned counsel for respondents No.4 to 10 present.

File to come up alongwith connected service appeal No.7091/2021 on 03.01.2022 before S.B.



(Rozina Rehman)
Member (J)

03.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Dr. Tajdar Alam, Deputy Director (Admn) for respondents No 1, 2 & 3 present. Counsel for respondents No. 4 to 10 present.

File to come up alongwith connected service appeal No. 7091/2021 on 17.01.2022 before S.B.



(Rozina Rehman)
Member (J)

17.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Jaffar Ali, Assistant for official respondents No. 1 to 3 present. Learned counsel for respondent No. 4 to 10 present.

File to come up alongwith connected service appeal No. 7091/2021 on 10.02.2022 before S.B.



(Atiq-Ur-Rehman Wazir)
Member (E)

08.09.2021

Mr. Shiraz Kha, Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Learned Additional Advocate General alongwith Mr. Jafar Ali, Assistant for respondents No. 1 to 3 and Mr. Haroon Sarfaraz, Legal Advisor for respondents No. 4 to 10 present.

Written reply not submitted. Learned AAG seeks time to for submission of reply on the next date. Adjourned. To come up for reply/preliminary hearing before the S.B on 26.10.2021.

The operation of the impugned order is suspended till next date.


(MIAN MUHAMMAD)
MEMBER (E)

26.10.2021

Junior to counsel for the appellant present and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned AAG seeks further time for submission of written reply. To come up for reply/preliminary hearing on 22.12.2021 before the S.B. The operation of impugned order shall remain suspended till next date.





Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7092 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/07/2021	<p>The appeal of Mr. Niaz Muhammad resubmitted today by Mr. Jalal-ud-Din 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</p>
2-	04.08.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/08/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>After hearing arguments at some length, pre-admission notice is necessary to be issued to the respondents. To come up for reply/preliminary hearing on 08.09.2021 before S.B.</p> <p>The operation of the impugned order is suspended till next date.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Niaz Muhammad Cook Khyber Teaching Hospital MTI Peshawar received today i.e. on 27.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Check list is not attached with the appeal.
- 5- Affidavit may be got attested by the Oath Commissioner.
- 6- Annexure-A of the appeal is illegible which may be replaced by legible/better one.

No. 1425 /S.T,

Dt. 28/07/2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Jalal-ud-Din Adv. Pesh.

Resubmitted on 28/07/21
after removal of objections.



7092

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: سازمانی ننگ دی سی بی کے افسر

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
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: walid khanSignature: [Signature]Dated: 28/11/21

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No 7092/2021

Niaz Muhammad

VERSUS

D.G Health Peshawar and others

INDEX

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Grounds of Appeal	-	1-7
2.	Affidavit	-	8
3.	Application for interim relief	-	9-14
4.	Addresses of the parties	-	12
5.	Copy of the initial appoint	'A'	13-15
6.	Copy of the impugned order dated 31-3-2021	'B'	16
7.	Copy of the order dated 07-07-2021 of Medical Tribunal, Peshawar	'C'	17
8.	Copy of the grounds of appeal and receiving order on the merge of departmental appeal	'D'	18
9.	Wakalat Nama (In original)	-	19

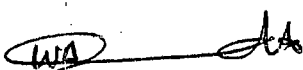
Appellant

Through:


(SHAIBER KHAN)


(JALAL UD DIN)


(RAHMAT ULLAH KUNDI)
&


(WAHID KHAN KHALIL)
Advocates,
High Court Peshawar

Dated: -27-07-2021

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No _____/2021

Niaz Muhammad S/O Sher Muhammad, Cook (Civil Servant)
Khyber Teaching Hospital, MTI, Peshawar.....(Appellant)

VERSUS

1. Director General Health Services, Khyber Pakhtunkhwa,
Peshawar
2. Additional Director General (Admin), Directorate General
Health Services, Khyber Pakhtunkhwa, Peshawar
3. Government of Khyber Pakhtunkhwa through Chief
Secretary Civil Secretariat, Peshawar
4. Hospital Director, MTI, KTH, Peshawar
5. Medical Director, MTI, KTH, Peshawar
6. Director Finance, MTI, KTH, Peshawar
7. Human Resources through its Manager MTI, KTH, Peshawar
8. Account Officer, MTI, KTH, Peshawar
9. Manager Facilities Management, MTI, KTH, Peshawar
10. Board of Governor through its Secretary MTI, Khyber
Teaching Hospital, Peshawar.....(Respondents)

Appeal under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with other enabling provision of law applicable to the matter against impugned order, dated 31-3-2021, whereby through impugned transfer order the Appellant has been illegally, without any lawful authority, transferred from Khyber Teaching Hospital (MTI) to Director General Health by Respondent No 4/Hospital Director without any rhyme, reasons and obtaining proper approval from competent authority against which the departmental representative / appeal dated 20th April, 2021 received on 22nd April, 2021 has not been responded till-date within expiry of statutory period, hence the instant appeal

Respectfully Sheweth:-

Brief facts leading to this service appeal are as under:-

- 1) That the Appellant is initially appointed on temporary basis in the Respondent's Officer Khyber Teaching Hospital MTI and was later on regularized on permanent posts and since then the Appellant is working against the permanent posts. (Copy of the initial appointment is attached as Annex 'A').
- 2) That the Respondents/Khyber Teaching Hospital MTI Peshawar through Respondent No 1 issued impugned

transfer order dated 31-03-2021 of Appellant and attached the salary of the Appellant without any rhymes, reasons and in violation of law, rules and regulations. (Copy of impugned order is attached as Annex 'B').

3) That initially, the Appellant filed appeal under Section 16-A of MTI Reforms Act 2015 (Amended Act 2020), read with Section of Medical Teaching Institution (MTI) before the Khyber Pakhtunkhwa Medical Tribunal Hayatabad, Peshawar against the impugned order of transfer, but the same was withdrawn vide order dated 07-07-2021; but the Chairman Medical Tribunal, to approach the proper forum. (Copy of the order dated 07-07-2021 is attached as Annex 'C').

4) That against the impugned transfer order dated 31-3-2021, the Appellant filed departmental appeal/representation on 20-04-2021, which was received by the Respondent on dated 22-04-2021 but the same has not been responded by the Respondent/department after expiry of statutory period under the law. (Copy of the grounds of appeal and receiving order on the merge of departmental appeal is attached as Annex 'D').

5) That the Appellant being aggrieved from the impugned order, filed departmental appeal before the competent authority, which departmental appeal has not yet been entertained and the Appellant has been constrained to

knock the door of the competent forum for the redressal of his grievances on the following grounds, inter-alia:- 4

GROUND:-

- A) That the Appellant is law abiding citizen of Pakistan and is employee at Khyber Teaching Hospital-MTI, Peshawar.
- B) That the Respondents/Khyber Teaching Hospital MTI Peshawar has acted beyond its jurisdiction and thus committed gross illegality.
- C) That the impugned order of transfer and attached of salary is illegal and the same is not tenable in the eyes of law and procedure as well as the dictums of the apex Court of Pakistan.
- D) That the allegations leveled by the Respondents are strictly denied by the Appellants and such allegations have not yet been proved in fact finding inquiry by any independent and reliable source. The word "Show Cause" meant to make clear of apparent, which has been held in 2006 SCMR 37 and 2007 CLC 1123 by the august Supreme Court of Pakistan, as by evidence testimony or reasoning to prove some guilt.
- E) That Appellant, with good record of service for more than 15 years, fully aware of his official responsibilities and being a disciplined official have not committed any wrong, therefore, the whole story and allegation are baseless and

5

neither proved nor any case was registered. Therefore, no any single iota of evidence is available in this regard.

F) That the imposition of penalty of transfer and attachment of salary of the Appellant is against the law, rules and regulations.

G) That the authority initiated the disciplinary proceeding on receiving an anonymous complaint, without giving any show cause to the Appellant. The complainant has not been examined in support of allegations in the presence of Appellant. In such eventuality, the allegations would be deemed to have not been proved in accordance with law. Such inquiry would be illegal and no punishment could be imposed on the accused on the basis of such inquiry. (Reliance is placed on 2005 PLC (CS) 1015).

H) That the transfer and attachment of salary of the Appellant is a major penalty and it is settled principle of law that such major penalty cannot be imposed without proper and regular inquiry. This view has been constantly maintained by this Honourable Tribunal as well as by the august Supreme Court of Pakistan. Reliance is placed on the following judgments.

- i. 2001 TD (Service) 147
- ii. PLJ 2002 (SC) 525
- iii. NLR 2003 Service 133 (SC)
- iv. 2003 TD (Service) 413

- 6
- v. 2003 SCMR 681
 - vi. NLR 2004 Service 22 (SC)
 - vii. 2004 SCMR 294
 - viii. 2004 PLC (CS) 328 and 344 (SC)
 - ix. 2005 PLC (CS) 256 and 263

- I) That the transfer order was not a speaking order as against the Section 24-A of the General Clause Act, 1897, which stipulates that every order should be speaking one and well-reasoned. It has been held in a case reported as 2002 PLC (CS) 1480, that "Any order passed by the executive authority must be speaking one and shall be well reasoned". Therefore, the transfer order being against the Section 24-A of the General Clauses Act, 1897 is liable to be set aside.
- J) That after withdrawal of appeal under MTI rule, the Respondents relieved the Appellant, but the relieving order has not been executed upon the Appellant neither the Appellant has assumed the charge at his new place of posting nor the Appellant has relinquished the charge from the old place because the MTI rules has not been applicable on Appellant.
- K) That any other ground, not raised specifically may graciously be allowed to be raised at the time of arguments.


PRAYER:-

It is, therefore, most respectfully prayed that on acceptance of this Appeal, the impugned order of transfer and attachment of salary of Appellant may please be set aside being against the law, rules and regulations and the initial order of posting at KTH be restored to his original post and the salary alongwith all back benefits from the date of impugned order, may please be released in favour of the Appellant.


Any other relief, which this Honourable Tribunal deems proper in the circumstances of the appeal, may also be granted in favour of Appellant.


Appellant

Through:


(SHAIBER KHAN)


(JALAL UD DIN)

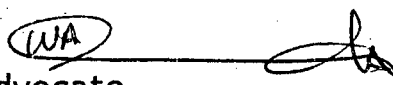

(RAHMAT ULLAH KUNDI)
&


(WAHID KHAN KHALIL)
Advocates,
High Court Peshawar

Dated: -27-07-2021

NOTE:-

No such appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.


Advocate

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

8

Niaz Muhammad.....(Appellant)

VERSUS

D.G Health Peshawar and others.....(Respondents)

AFFIDAVIT

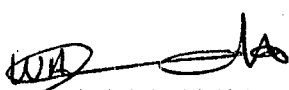
I, Niaz Muhammad S/O Sher Muhammad, Cook (Civil Servant) Khyber Teaching Hospital, MTI, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.

DEPONENT 

CNIC # 17301-37087205

Cell # 0313-9638575

Identified by:-


(WAHID KHAN KHALIL)
Advocate
High Court, Peshawar

Niaz Muhammad.....(Appellant)

V E R S U S

D.G Health Peshawar and others.....(Respondents)

Application for interim relief to the effect that the Respondents may kindly be directed to suspend the impugned order dated 31st March, 2021 passed by the Respondent till the final disposal of the instant appeal. Furthermore, the salary of the Appellant may kindly be released forthwith alongwith all back benefit

Respectfully Sheweth: -

- 1) That the captioned appeal has been filed and admitted for full hearing before this Honourable Court, wherein no date of hearing has yet been fixed.
- 2) That the contents of the appeal may kindly be considered as integral part and parcel of this application.
- 3) That due to the grounds set out in the main service appeal, the Petitioner/Appellant has got good prima facie case in his favour and is hopeful of its success.
- 4) That if the impugned transfer order mentioned above is not suspended, then the Petitioner/Appellant would suffer extreme irreparable loss.

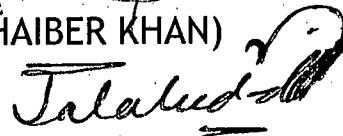
5) That due to the peculiar circumstances of the case in hand, balance of convenience also lies in favour of allowing this application.

It is, therefore, respectfully prayed that on acceptance of this Application, the impugned office order 31st March, 2021 passed by the Respondent may kindly be suspended till the final disposal of the instant appeal. Furthermore, the salary of the Appellant may kindly be released forthwith alongwith all back benefits.


Applicant/Appellant

Through:


(SHAIBER KHAN)


(JALAL UD DIN)


(REHMAT ULLAH KUNDI)
&


(WAHID KHAN KHALIL)
Advocates,
High Court Peshawar

Dated: -27-07-2021

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

11

Niaz Muhammad.....(Appellant)

V E R S U S

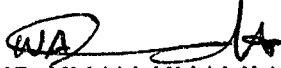
D.G Health Peshawar and others.....(Respondents)

AFFIDAVIT

I, Niaz Muhammad S/O Sher Muhammad, Cook (Civil Servant) Khyber Teaching Hospital, MTI, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.

DEPONENT سیاؤ محمد
CNIC # 17301-3768720-5
Cell # 0313-9638575

Identified by:-


(WAHID KHAN KHALIL)
Advocate
High Court, Peshawar

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

(12)

Niaz Muhammad

V E R S U S

D.G Health Peshawar and others

MEMO OF ADDRESSES

APPELLANT

Niaz Muhammad S/O Sher Muhammad, Cook (Civil Servant)
Khyber Teaching Hospital, MTI, Peshawar

RESPONDENTS

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
2. Additional Director General (Admin), Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar
3. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar
4. Hospital Director, MTI, KTH, Peshawar
5. Medical Director, MTI, KTH, Peshawar
6. Director Finance, MTI, KTH, Peshawar
7. Human Resources through its Manager MTI, KTH, Peshawar
8. Account Officer, MTI, KTH, Peshawar
9. Manager Facilities Management, MTI, KTH, Peshawar
10. Board of Governor through its Secretary MTI, Khyber Teaching Hospital, Peshawar

Through:

Appellant

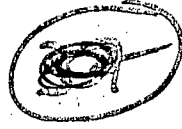

(JALAL UD DIN)

Advocate,

High Court, Peshawar

Dated: -21-07-2021

Annex (A)



(6)

(13)

KHYBER HOSPITAL, PESHAWAR.

OFFICE ORDER

No. _____/KH(M) Dated _____/1988.

Mr. Niaz Mohammad S/O Sher, Village Nodah Payan, Peshawar is hereby appointed as Dishwasher in this Institution on the leave vacancy of Mr. Omar Gul, Dishwasher who has been granted 3 months leave without pay from 1.6.88 to 31.8.88.

(Prof: Dr. Mohammad Alam Khan Afridi
Administrator,
Khyber Hospital, Peshawar.

No. 3387-97/KH(M)

Dated 5/6 /1988.

Copy of the above is forwarded for information and necessary action to:-

- 1) Deputy Medical Suptd., (Adm) Khyber Hospital, Peshawar.
- 2) Asstt: Accounts Officer KHP.
- 3) I/C Dishwasher, K.H.F.
- 4) Mr. Niaz Mohammad S/O Sher, Vill: Nodah Payan, Peshawar.

(Prof: Dr. Mohammad Alam Khan Afridi
Administrare,
Khyber Hospital, Peshawar.

(36)

Amir D

HYBER HOSPITAL, PESHAWAR.

OFFICE ORDER.

(14)

_____/Am(O) _____ Dated: _____/1968.

Mr. Niaz Muhammad S/O Sher, Village Model, Lyallpur, is hereby appointed as Dishwasher in this Institution in the vacancy of Mr. Omar Gul, Dishwasher who has been granted leave without pay from 1.6.68 to 31.8.68.

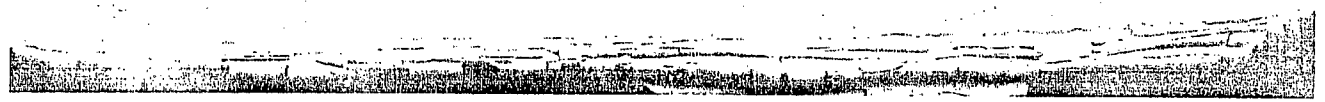
(Prof: Dr. Muhammad Ali Khan Sherani)
Administrator,
Hyber Hospital, Peshawar.

No. 3357-97/Am(O) Dated 3/6/1968.

A copy of the above is forwarded for information and action to :-

- 1) Asst. Medical Supt., (Adm) Hyber Hospital, Peshawar.
- 2) Asstt. Accounts Officer H.H.
- 3) Mr. Dishwasher, H.H.P.
- 4) Mr. Niaz Muhammad S/O Sher, Vill: Model, Lyallpur.

(Prof: Dr. Muhammad Ali Khan Sherani)
Administrator,
Hyber Hospital, Peshawar.



15

Card No. 135-64-3777-24
MEDICAL CERTIFICATE

38

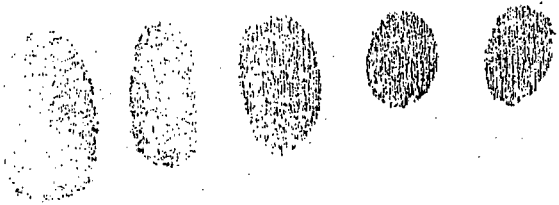
Name of Official..... Nizam Mohammad
 Caste or race..... Muslim
 Father's name..... Sher
 Residence..... Village Nodah Payan, Peshawar.
 Date of Birth..... 1964
 Exact height by measurement..... 5-6
 Personal marks of identification..... A mark on forehead of left side chest
 Signature of the Official..... [Signature]
 Signature of head of office..... [Signature]

Administrator,
 Khyber Hospital, Peshawar.
 Seal of Office.....

Administrator:
 Khyber Hospital Peshawar

I do hereby certify that I have examined Mr. Nizam Mohammad a candidate for employment in the Office of the Khyber Hosp: Peshawar and can not discover that he has any disease communicable or other constitutional affection or bodily infirmity except nil

I do not consider this as disqualification for employment in the office of the Khyber Hosp: Peshawar. His age according to his own statement... 24... year and by appearance about 24 years.



LEFT HAND THUMB AND FINGER IMPRESSIONS

[Signature]
 Medical Superintendent
 Civil Hospital..... 4/4/58



MEDICAL TEACHING INSTITUTION

KHYBER TEACHING HOSPITAL, PESHAWAR

Office of the Hospital Director

No. 2982 /KTH/HRD

Dated 31/03/2021

(16)

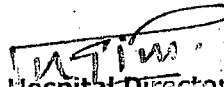
Amex-B

(a)

OFFICE ORDER

The services of **Mr. Niaz Muhammad** S/O Sher Muhammad, Cook (**Civil Servant**) attached to this institution are hereby repatriated to his parent department i.e Directorate General Health Services Khyber Pakhtunkhwa on account of negligence in performance of duties. He is also involved in sabotage activities against institution and instigating other employees / public against the institutional reforms.

His services are no more required in this institution and he stands relieved to his parent department in the best public interest.


Hospital Director
MTI, KTH, Peshawar.

No. _____ /KTH/HRD

Copy to:-

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Director Finance, MTI KTH, Peshawar.
3. Manager Human Resources, MTI, KTH, Peshawar *to inactivate from HMIS.*
4. Manager Facilities Management, MTI, KTH, Peshawar.
5. Accounts Officer, MTI, KTH, Peshawar *to stop his salary.*
6. Official Concerned.

Hospital Director
MTI, KTH, Peshawar.

Dated: 20-04-2021 Peshawar

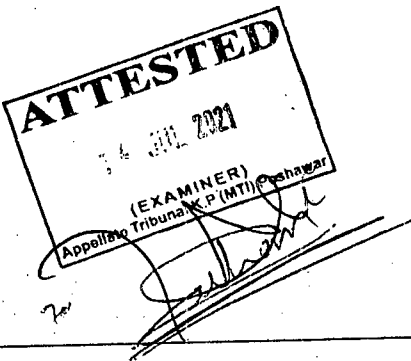
Annex-(c)

KHYBER PAKHTUNKHWA MEDICAL TEACHING INSTITUTIONS

APPELLATE TRIBUNAL

17

ORDER SHEET

<u>Date of hearing</u>	Proceedings of the Tribunal
7.7.2021	<p><u>MTI Appeal No.31/2021</u></p> <p>Present: Mr.Wahid Khan Khalil, advocate for the appellant.</p> <p>_____</p> <p><u>NISAR HUSSIAN KHAN, CHAIRMAN:-</u> Submits that he is under instructions of his client to withdraw the instant appeal.</p> <p>Allowed. The same stands dismissed as withdrawn.</p> <p style="text-align: center;"></p>

To,

The Worthy
Chairman
Board of Governor (BOG)
Khyber Teaching Institution/Hospital
Peshawar

18

Amir (B)

Subject: - DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
TRANSFER ORDER DATED 31st MARCH, 2021

Respected Sir,

With due respect, I have the honour this departmental appeal for your kind consideration and favour action on the following facts:-

- 1) That the Appellant is a law abiding citizen of Pakistan and having good reputation among the locality.
- 2) That the Appellant was appointed as civil servant in Khyber Teaching Hospital and also performed his duty with full zeal and devotion and no adverse entry is made against the Appellant by any competent officer.
- 3) That the Appellant neither involved or conduct in any unlawful activities against the institution nor infringe any public or private person right. Furthermore, all the efforts or services of the Appellant are for the institution and for better reform in the institution.
- 4) That it is pertinent to mention here that no inquiry was conducted, hence the transfer order of the Applicant is illegal and unlawful.
- 5) That the Appellant always work for the department and in the public interest.

In view of the above, it is therefore, humbly prayed that the impugned order dated 31-03-2021, the transfer order of the Appellant may graciously be reviewed for the best performance of Appellant's duty.

Yours sincerely,

(NIAZ MUHAMMAD)
Cook (Civil Servant)
Khyber Teaching Hospital
Peshawar

Dated: 20/04/2021

Received

22/4/2021

SECRETARY
BOARD OF GOVERNORS
Medical Teaching Institution
Khyber Teaching Hospital
Peshawar

2021ء پنجاب
سیلز محمد بنام ڈی جی سلیٹو و سب

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لکھنؤ کیلئے شہید خان / حلال الزین / رحمت اللہ کونڈی / ادا صاحبہ نے درخواست
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی 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 مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

سیلز محمد
محمد

Acceptance

2021

7

ماہ

27

المرقوم

WA

العہدہ

کے لئے منظور ہے۔

Rahmat Kundi

Rahmat

Talab
Talab
Talab

مقام

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 7092/2021

Niaz Muhammad

VS

DG Health Peshawar and others.

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RESPONDENTS NO. 04-10

THROUGH:



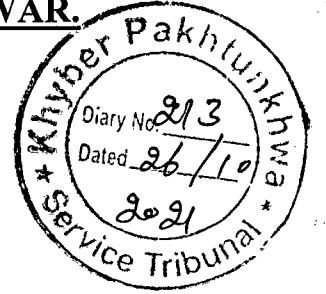
**(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.**

Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 03339103240

(1)

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 7092/2021



Niaz Muhammad

VS

DG Health Peshawar and others.

**PARA-WISE COMMENTS ON BEHALF OF
RESPONDENTS NO. 4-10**

RESPECTFULLY SHEWETH:-

The respondents No. 4 to 10 most earnestly seeks permission of this Learned Tribunal to submit as under:-

Preliminary Objections:

1. That no cause of action has accrued to the appellant as the appellant has no vested or legal right to continue remain posted for more then the tenure stipulated by law and or regulations.
2. That no right of the appellant has been infringed by the answering respondents as such the appeal is not maintainable before this learned forum.
3. That the appellant has come to this court with sullied hand, by concealing material facts.
4. That the subject petition is also not maintainable for mis-joinder and non-joinder of necessary parties.
5. That with utmost respect this learned tribunal has no jurisdiction to entertain the subject lis.
6. That the appellant does not fall within the definition of an aggrieved person therefore the subject appeal is not maintainable.

FACTS:-

1. Paragraph Number 1, being introductory needs no comments on part of the answering respondents. The appellant is put to strict proof.
2. Paragraph Number 2 is correct to the extent of promulgation of the impugned order of repatriation. However it is clarified that section 16 (3A) of the MTI Act, 2015 deems all civil servants working in MTI to be deputationist, for easy reference the ibid provision is being reproduced as under;

1

(3A) Civil servants who do not opt for absorption in the MEDICAL teaching Institution, so notified, shall be dealt with in such a manner as provided in section 11a of the Khyber Pakhtunkhwa/Act, 1973, for their future posting, which includes deputation to the Medical Teaching Institution subject to a request being made by the Board;

*Provided that a civil servant working in a medical Teaching Institution, shall at all time, **be deemed to be on deputation.** All deductions made from the pay of such civil servants shall be deposited by the borrowing authority.)emphasis.*

(3B) A Civil servant at the request of the board may be sent on deputation to a Medical Teaching Institution by the Government. For civil servants on deputation to the Medical Teaching Institution, pension contribution shall be made by the Medical Teaching Institution. The deputation of a civil servant to a Medical Teaching Institution may be terminated by the Board at any time without assigning any reasons thereof and such civil servants services shall revert to the Government immediately upon such termination being notified by the Board.)

BOG decision is Annex A

3. Paragraph Number 3 is misconceived as the appeal pending before the MTI Tribunal was withdrawn in simpliciter, neither any permission was sought nor was any direction given to approach this Honorable Tribunal as such by principles of constructive res-judicata too the lis at hand is liable to be dismissed.
4. Paragraph Number 4 needs no comments on behalf of the answering Respondents.

5. Paragraph Number 5 is correct as the competent authority of the civil servant is not the BoG but the Respondent Numbered 1, as explained earlier the status of the Appellant is/was that of a deputationist only. In view of the replies to proceeding paragraphs, there exists no grievance of the appellant and such the appeal of the appellant is ill founded and liable to be dismissed.

FOUNDATIONS:-

- A. Ground A & B are incorrect and strenuously denied. As stated earlier the impugned office order has legal backing in the MTI act of 2015, moreover even otherwise the law of the land is quite clear on the matter of deputationist having no vested right to continue to work on deputation, neither is it necessary in law for the borrowing department to give reason for repatriating the deputationist.
- B. Ground C is incorrect and sternly denied. The impugned order is strictly legal, the appellant is assured that the Respondents bear no ill-will or grudge against him.
- C. Grounds D & E are incorrect, hence denied. The appellant cannot work on deputation indefinitely nor has any legal right accrued in his favour, furthermore repatriation back to his parent department is not a stigma by any stretch of imagination nor does law envisage giving right of personal hearing in matters of posting, transfer and/or repatriation to the employees, furthermore being a deputationist the proving or disproving of the allegations comes within the ambit of the Respondent Number 1 only.
- D. Ground F is incorrect and therefore denied. No provision of law, what to say of the constitution has been infringed by repatriating the appellant back to his parent department, nor is transfer/repatriation any penalty.
- E. Ground G is misconceived hence incorrect.
- F. Ground H is incorrect. The repatriating of the appellant back to his parent department cannot be construed as a penalty major or minor.
- G. Ground I is incorrect. The order of repatriation being the prerogative of the Answering Respondents has been issued legally nor has it infringed the provision of section-24A of the General Clauses Act.

- H. Ground J is incorrect. The appellant willfully failed to execute the relieving order showing his lack of affinity in following law and order.
- I. Ground K requires no comments. The Answering Respondents seek permission and reserve the right to agitate any further legal and factual ground at the time of hearing of the subject petition in the interest of fairness and justice.
- J. That any other fact/ground not specifically accepted herein shall be deemed to have been denied by the Answering Respondents. Furthermore in view of the provisions of Section 16-A of the MTI Act this Honorable Tribunal with utmost respect has no jurisdiction to adjudicate on the lis.

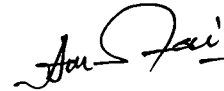
PRAYER

It is therefore, submitted with profound respect that this Honorable Tribunal may very graciously be please to

- I. **Dismiss** the subject petition with costs being meritless and non-maintainable.
- II. **Grant** any other relief to the Respondents No. 4-10 as deemed appropriate in the facts and circumstances of the case.

RESPONDENTS NO. 04-10

THROUGH:



**(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.**

5

VERIFICATION

Verified on oath on this _____ Day of _____ 2021 at Peshawar that the contents of these comments, including all the objections, paragraphs and grounds are true and correct to the best of my knowledge and nothing have been concealed from this Honorable Court either intentionally or otherwise.

DEPONENT 

6

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 7092/2021

Niaz Muhammad

VS

DG Health Peshawar and others.

AFFIDAVIT

I, **Haroon Sarfaraz**, Incharge Litigation, MTI-KTH/KMC/KCD Peshawar do hereby affirm that the contents of this para wise comments are true and correct and nothing has been concealed from this Honorable Tribunal.

DEPONENT



7

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 7092/2021

Niaz Muhammad VS DG Health Peshawar and others.

**REPLY TO THE APPLICATION FOR INTERIM
INJUNCTION ON BEHALF OF RESPONDENTS NO. 4 TO 10**

RESPECTFULLY SHEWETH:-

The respondents No. 4 to 10 most earnestly seeks permission of this Learned Tribunal to submit as under:-

1. That the reply to the main appeal may also be considered as part and parcel to the subject reply.
2. That the appellant has got no case prima facie and/or otherwise.
3. That no irreparable loss will be caused to the appellant as he has no case to begin with.
4. That none of the ingredients required for grant of interim injunction is available to the appellant as the balance of convenience also does not favour the appellant/applicant.

PRAYER

It is therefore, submitted with profound respect that this Honorable Tribunal may very graciously be pleased to dismiss the plea for grant of Interim Relief in favour of the Respondents.

RESPONDENTS NO. 04-10

THROUGH:



**(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
OF PAKISTAN.**

8

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 7092/2021

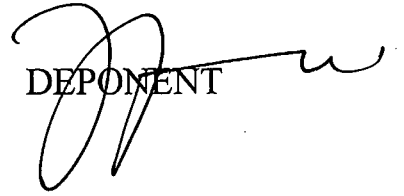
Niaz Muhammad

VS

DG Health Peshawar and others.

AFFIDAVIT

I, **Haroon Sarfaraz**, Incharge Litigation,
MTI-KTH/KMC/KCD Peshawar do hereby affirm that the contents of this para
wise comments are true and correct and nothing has been concealed from this
Honorable Tribunal.

DEPONENT 



A

MINUTES OF MEETING OF 88TH BOG MTI KTH/KMC/KCD HELD ON 25TH AUGUST,2021 IN KHYBER MEDICAL COLLEGE, PESHAWR.

Agenda Item No.	Agenda Point (88 th BoG Meeting)	Case Detail/ Discussion	Decision of the Board	Action by	Timeline
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OFFICE OF THE BOARD OF GOVERNORS
 MEDICAL TEACHING INSTITUTION
 KHYBER TEACHING HOSPITAL/KMC/KCD, PESHAWAR



No. 4353 BoG/MTI-KTH Dated: 03-09-2021

88th BOG MTI KTH MINUTES OF MEETING

The 88th meeting of the Board of Governors, MTI, KTH/KMC/KCD, Peshawar was held on 25th August,2021 at 10.00 AM in the conference room of KMC under the Chairmanship of Prof Dr. Nadeem Khawar Chairman BoG MTI KTH;

The following attended the meeting;

- | | |
|-----------------------------|---------------------|
| 1. Prof. Dr. Nadeem Khawar | Chairman BoGMTI KTH |
| 2. Prof.Dr.Zafar Durrani | Member BoG MTI KTH |
| 3. Mr.Najeeb Ur Rehman | Member BoG MTI KTH |
| 4. Barrister Waqar Ali Khan | Member BoG MTI KTH |
| 5. Dr.Sadia Shafiq | Member BoG MTI KTH |

Noted: Worthy Members BoG Mr.Saboor Sethi and Hasaan Khawar could not attend.

The following also participated in the meeting after exclusive meeting of the Board;

- | | |
|-----------------------------|----------------------------------|
| 1. Prof.Dr.Mahmud Aurangzeb | Dean KMC |
| 2. Dr.Zafar Afridi | Hospital Director MTI KTH |
| 3. Prof.Dr.Rooh Ul Muqim | Acting Medicall Director MTI KTH |
| 4. Dr.Saud Islam Malik | Associate Acting H.D MTI KTH |
| 5. Mr.Ikramullah Jan | Director Finance MTI KTH |
| 6. Mr.Rahmatullah | Nursing Director MTI KTH |


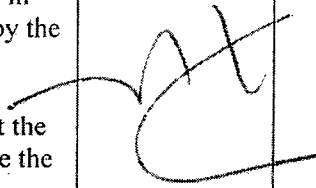
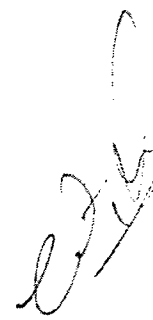
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ATTESTED

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1.	10% Adhoc Relief announced by the K.P Govt. (annexure-1) The Finance Director MTI KTH has submitted the attached (Annex-1)Financial implications for the Salary Increment as per Government Notification for all the employees. As per decision of the Finance Sub Committee by Zoom on 27.7.21 the increment shall be reviewed by the HR	Approval is granted as under: a. Civil Employees: As per Govt notification: Via No FD(SOSR-1)1-1/2021 dated 07-07-2021. b. Institutional employees: Adhoc Relief, 2021 10% of basic salary for those employees having	D.F/ Legal team.	
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MINUTES OF MEETING OF 88TH BOG MTI KTH/KMC/KCD HELD ON 25TH AUGUST,2021 IN KHYBER MEDICAL COLLEGE, PESHAWR.

Agenda Item No.	Agenda Point (88 th BoG Meeting)	Case Detail/ Discussion	Decision of the Board	Action by	Timeline
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	implementation. He has submitted a detailed implementation report with regards to the decisions of the Board in its 81 st to 87 th meetings (Copy of minutes dt.16.8.2021 attached as annexure 8-c) for information.		Pharmacy as per suggestion of the H.D, MTI KTH.		
9.a	 <p>K.P Services Tribunal Peshawar Order Sheets dated.28.07.2021 & 4.8.2021 in Services appeals No.7091, 7092,7093&7094 titled (Niaz Muhammad, Khalil Ur Rehman, Ghulam Ali & Yaqoob Masih Civil Servants Vs DGHS & Others)</p>	<p>The Legal Officer MTI KTH has submitted the attached working paper , on the subject noted above, saying that Appellants concerned were repatriated from this institution to their parent Department i. e Director General Health Services K.P being Civil Servants by the then Hospital Director Prof.Dr.Rooh Ul Muqim. They filed appeals in the K.P Services Tribunal Peshawar wherein their cases were put for pre-admission notice and fixed for hearing on 08-09-2021 with the order that "The operation of the impugned orders is suspended till next date". The worthy H.D after discussion with legal officer marked the cases to be placed before the Board of Governors for decision.</p>	<p>The Board hereby complies with the Services Tribunal order.</p> <p>The allegations as mentioned in their relieving orders shall be expunged under Section-16(3-B) of the MTI Reforms Act,2015. A corrigendum in their relieving orders to be issued by the H.D MTI KTH.</p> <p>Meanwhile, the Board directed that the Legal team shall endeavor to vacate the stay order on priority basis.</p>	<p>Legal Officer KTH,</p> 	
9. b	<p>Appeal of Dr. Jamshed Saeed PMO BPS-19</p>	<p>Dr. Jamshed Saeed Ex- SMO (Civil Servant) has submitted the attached appeal (annex 9.b) against the relieving order issued by the Medical Director MTI KTH vide No.392/KTH/MD dated.19-07-2021 on account of his unprofessional behavior towards duties, disobeying the orders of the competent authority and refusal to provide necessary health facilities to the patients during his duty.</p> <p>Dr.Jamshed in his appeal has denied the charges leveled upon him and has requested that the relieving order may be withdrawn and he may be allowed to resume his official duty on his original post.</p>	<p>The representation of Dr. Jamshed was perused. The BoG in 81st meeting decided that the civil servants working in MTI KTH/KMC/KCD will be repatriated and institutional employees will be hired. The hiring of institutional employees with fulfillment of all codal formalities has been initiated since then and civil servants working in MTI KTH are being repatriated.</p> <p>Hence the Board developed the consensus that under the section-16, sub-section 3-B of the MTI reforms Act,2015 repatriation of civil servants can be done without assigning any reasons or allegations. Therefore the BOG does not refute the competent authority decision of relieving the civil</p>	<p>M.D KTH</p> 	

CONFIDENTIAL

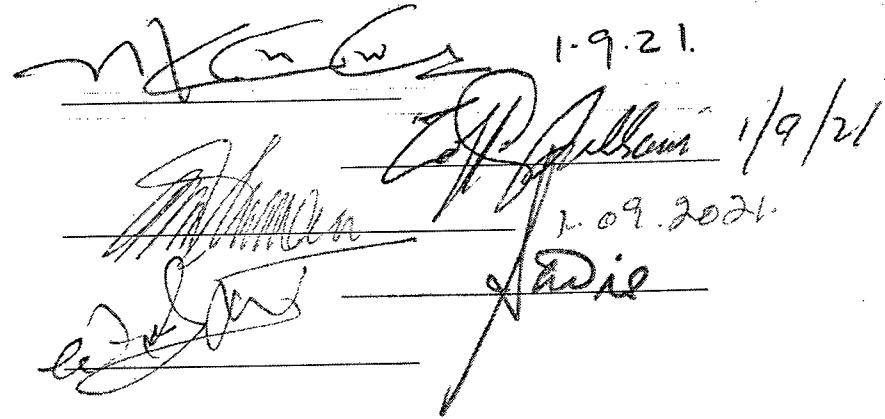
NO: 4353/BOG MTI KTH DATA: 03-09-2021

MINUTES OF MEETING OF 88TH BOG MTI KTH/KMC/KCD HELD ON 25TH AUGUST, 2021 IN KHYBER MEDICAL COLLEGE, PESHAWR.

Agenda Item No.	Agenda Point (88 th BoG Meeting)	Case Detail/ Discussion	Decision of the Board	Action by	Timeline
(11)		proper forum decided on 27-07-2021 (Annex-C). 4. In pursuance of the decision of Service Tribunal dated: 27-07-2021 in service appeal No. 1213/2018, the Dean KMC issued her notification No. 6481-95/Estt/KMC dated: 03-08-2021 regarding repatriation to her parent Department and vacation of KMC accommodation at Girls Hostel (Annex-D). 5. The Officer concerned submitted appeal against the notification No.9481 dated.03-082021 issued by the Dean KMC.			

The meeting adjourned with a vote of thanks from the Chair.

- | | |
|-----------------------------|----------------------|
| 1. Prof. Dr. Nadeem Khawar | Chairman BoG MTI KTH |
| 2. Prof. Dr. Zaffar Durrani | Member BoG MTI KTH |
| 3. Mr. Najeeb Ur Rahman | Member BoG MTI KTH |
| 4. Dr. Sadia Shafiq | Member BoG MTI KTH |
| 5. Barrister Waqar Ali Khan | Member BoG MTI KTH |


1-9-21.
1/9/21
1.09.2021
Sadia

ATTENDED

(12)

MEDICAL TEACHING INSTITUTION

KHYBER TEACHING HOSPITAL, PESHAWAR

Offices of the Hospital Director MTI, KTH


No. 4947 /KTH/HD

Dated. 07 / 06 /2021

AUTHORITY LETTER

Consequently upon the approval of the competent authority **Mr. Haroon Sarfaraz** Legal Officer MTI, KTH/KMC/KCD is hereby authorized to attend all courts of law including civil courts, criminal courts, High Courts, all tribunals and Supreme Court of Pakistan on behalf of MTI, KTH/KMC/KCD, Peshawar.

He is authorized to represent MTI-KTH, KMC & KCD, to sign all the documents, Power of Attorney (Wakalat nama), swear affidavit, make statement(s), file any petitions, complaints, file written statement or any other application and to do all other acts and things which may be deemed necessary or advisable during the course of the proceedings under my seal and stamp till further order.


Hospital Director
MTI, KTH, Peshawar

HOSPITAL DIRECTOR
Medical Teaching Institution
KTH, K.M.C. & KCD
Peshawar

13

POWER OF ATTORNEY

7092/21

IN HP Service Tribunal, Peshawar

Niaz Muhammad

COMPLAINANT (s)
PETITIONER (s)
APPELLANT (s)
APPLICANT (s)
APPELLANT (s)

Versus

DGHS etc

ACCUSED (s)
RESPONDENT(S)
DEFENDANT (s)

I/We Haroon Sarfraz the undersigned Respondent 4 to 10

Hereby appoint Asif Yousofai ASC in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To, appear act, and plead for me/ us in the above mentioned case in this Court / Tribunal or any other Court / Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
3. To receive payment of, and issue receipts for, all money that may be or become due and payable to me during the course on the conclusion of the proceedings.
4. To do all other acts and things which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:

- a. To ratify whatever the said advocate may do in the proceedings.
- b. Not to hold the advocate, responsible if the said case be proceeded ex-parte or dismissed in default in consequences of their absence from the Court / Tribunal when it is called for hearing.
- c. That the Advocate shall be entitled to withdraw from the prosecution of the said case, if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/We have signed this power of Attorney / Wakalatnama herein under, the contents of which have been read/ explained to me and fully understood by me on This _____ day of _____, 20_____ at Peshawar.

[Signature]
Signature of the executants/
MTI KTH Peshawar

[Signature]

Attested / Accepted subject to the term regarding payment of fee.

Name of advocate: Muhammad Asif Yousofai ASC.

BC No. _____

CNIC No. _____

Cell No _____