

**Execution Petition No. 211/2019**

12.02.2020

Petitioner alongwith his counsel and Mr. Usman Ghani, District Attorney alongwith M/S Amjid Ali, Assistant and Jaffar Shah, Assistant for the respondents present. Representative of the department submitted implementation report. The same is placed on record. Therefore, the execution petition is consigned to the record room. However, if the respondents failed to implement the implementation order than the petitioner will be at liberty to restore the instant execution petition. File be consigned to the record room.

ANNOUNCED

12.02.2020

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

17.12.2019

Petitioner in person and Addl. AG alongwith Sher Baz, S.O for the respondents present.

Representative of respondents has produced copy of summary sent to the Chief Minister Khyber Pakhtunkhwa on 25.11.2019. He states that in Paragraph-4 of the summary the implementation of judgment, subject to the final outcome of August Supreme Court of Pakistan in the pending CPLA, has been proposed. Further states that the summary is likely to be approved at an early date.

In view of the development the proceedings are adjourned to 30.01.2020 in order to avail outcome of the summary.

30.01.2020

Petitioner in person present. Mr. Kabir Ullah <sup>Chairman</sup> Khattak learned Additional Advocate General alongwith M/S Hazrat Shah Superintendent (for respondent No.2) and Salim Javid Litigation Officer (for respondent No.3) present.

Representative of respondent No.2 stated that the instant matter has been assigned to Sher Baz S.O-II (Litigation) for doing the needful and seeks time to furnish implementation report. Adjourn. To come up for further proceedings/conditional implementation report on 12.02.2020 before S.B. Notice be issued to Sher S.O-II (Litigation) for furnishing progress report in the present case on the date fixed.

  
Member

E.P. No. 211/2019  
Dr. Misal Khan vs Govt

13.11.2019

Petitioner in person and Addl. AG alongwith Sher Baz Khan, S.O for the respondents present.

The representative of respondents has produced a copy of summary prepared on 08.11.2019 in which it is proposed that the implementation of judgment dated 01.03.2019 be subject to the final verdict of Hon'ble Supreme Court of Pakistan in CPLA and the post-retirement benefits of petitioner shall remain attached/pending till final verdict of the Apex Court.

The summery appears to be in conflict with the orders of the Tribunal dated 25.09.2019 and 22.10.2019 and the proposal contained therein is not backed by any legal provision requiring the attachment of post-retirement benefits of petitioner till the decision of CPLA preferred by the respondents.

Learned AAG when confronted with the position requested for some more time to implement the judgment/orders of the Tribunal.

Adjourned to 17.12.2019 for further proceedings.

Chairman



22.10.2019

Petitioner with counsel and Mr. Saleem Javed, Litigation Officer alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present.

The representative of respondents requests for time to submit reply/comments with regard to implementation petition. Respondents may do so on or before next date of hearing.

Adjourned to 13.11.2019. In case implementation report is not submitted on next date punitive action will be initiated against the defaulting respondent/official in accordance with law.

  
Chairman

28.08.2019

Petitioner alongwith counsel and Mr. Usman Ghani, District Attorney for the respondents present.

On previous two occasions notices were issued to the respondents for submission of implementation report, however, they remained unrepresented even today. Learned District Attorney is, therefore, required to seek the implementation report from the respondents on next date of hearing.

Adjourned to 25.09.2019 before S.B.



Chairman

25.09.2019

Petitioner in person and Addl. AG alongwith Hazrat Shah, Superintendent for the respondents present.

Representative of the respondents states that a CPLA has been preferred against the judgment under implementation in which date of hearing is yet to be fixed.

The respondents are required to produce on the next date any order of restraint by the Apex Court or setting aside of the judgment under implementation. Else, the implementation report shall positively be submitted.

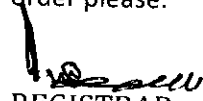


Adjourned to 22.10.2019 before S.B.



Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 211/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.5.2019	<p>The execution petition of Mr. Dr. Missal Khan submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 9/5/19</p>
2	10/05/19	<p>This execution petition be put up before S. Bench on <u>24/05/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	23.05.2019	<p>Notice of the present execution petition be issued to the respondents for implementation report/comments. To come up for implementation report/parawise comments on 04.07.2019 before S.B.</p> <p style="text-align: right;"> Member</p>

04.07.2019


Counsel for the petitioner and Addl. AG present. No one is present as representative on behalf of the respondents. Fresh notices be issued to them. To come up for implementation report on 28.08.2019 before S.B.

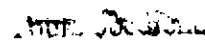
  
Member

The Hon'ble Chairman  
Member P. & H. Service Tribunal,  
Deshwar

Sir,

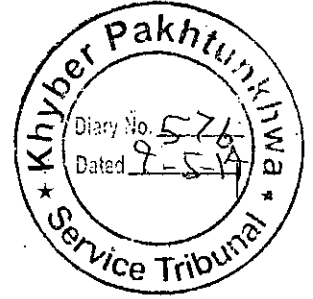
Respectfully I have to inform that I have to attend a Tribunal at Lahore for which I am in need of two days casual leave. I am, therefore, requesting that two days casual leave for the period 04th to 05th November, 2013 may kindly be granted to me with permission to leave my duties as obliged.

  
29.10.2013

  
(Munamir Nadeem)  
Member P. & H. Service Tribunal,  
Deshwar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Execution Petition No. 211 /2019  
In Service Appeal No.1498/2013



Dr. Misal Khan, Medical Superintendent,  
DHQ Teaching Hospital, D.I. Khan

**PETITIONER**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, KP, Civil Secretariat, Peshawar.
2. The Secretary, Government of Khyber Pakhtunkhwa, health Services Deptt., Civil Secretariat, Peshawar.
3. The Director General Health Services Department, KP, Peshawar.

**RESPONDENTS**

.....  
**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE JUDGMENT  
DATED: 01.03.2019 OF THIS HONOURABLE  
TRIBUNAL IN LETTER AND SPIRIT.**  
.....


**RESPECTFULLY SHEWETH:**

1. That the applicant/petitioner filed Service Appeal No.1499/2013 in this august Tribunal against the order dated 27.02.2013 whereby the petitioner has been removed from the service and penalty of recovery of 17.411/- has been imposed upon the petitioner.
2. That the said appeal was finally heard by the Honorable Tribunal on 01.3.2019 and the Honorable Tribunal was kind enough to partially accept the present appeal, the penalty of recovery was set aside and penalty of removal from service is converted in to the penalty of compulsory retirement from service. **(Copy of judgment is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 01.03.2019.





4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 01.03.2019 of this august Tribunal in letter and spirit and convert the major penalty of removal from service in to the major penalty of compulsory retirement. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

  
**APPLICANT/PETITIONER**  
Dr. Misal Khan

**THROUGH:**

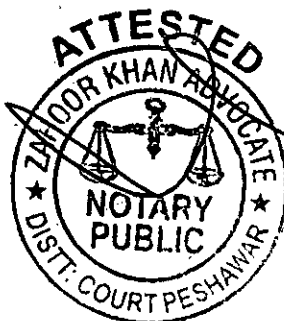
  
**(M. ASIF YOUSAFZAI)**  
Advocate Supreme Court

  
**(SYED NOMAN ALI BUKHARI)**  
Advocate, High Court  
Peshawar.

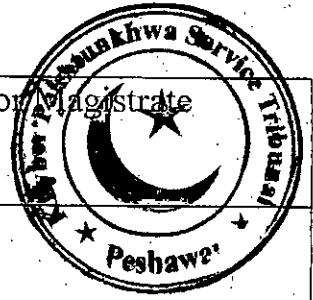
**AFFIDAVIT:**

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

  
**DEPONENT**



9 MAY 2019



Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	01.03.2019	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b> <b>Service Appeal No. 1498/2013</b></p> <p style="text-align: center;">Date of Institution ..... 26.07.2013 Date of Decision ..... 01.03.2019</p> <p>Dr. Misal Khan Medical Superintendent, DHQ Teaching Hospital, D.I.Khan.</p> <p style="text-align: right;"><b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <p>1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.</p> <p>2. The Secretary, Government of Khyber Pakhtunkhwa Health Services Department Peshawar.</p> <p>3. The Director General Health Services Department Khyber Pakhtunkhwa.</p> <p style="text-align: right;"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Appellant</p> <p>present. Learned counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney present.</p> <p>2. This Single/common judgment in the above captioned appeal shall also dispose of appeal bearing No.1499/2013 filed by Mr. Nazir Hussain (Ex-Storekeeper) as both the service appeals have arisen from the one and the same departmental inquiry proceeding against both the</p>

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Peshawar


appellants.

3. The appellant (Ex-Medical Superintendent DHQ Teaching Hospital D.I.Khan) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.02.2013 whereby he was awarded penalty of removal from service and recovery of Rs.18.785 million was also imposed on him on the charge of causing loss to government exchequer.

4. Learned counsel for the appellant argued that the appellant was working as M.S DHQ Teaching Hospital D.I.Khan when he was transferred to another hospital vide order dated 14.09.2011; that the appellant challenged the transfer order vide Service Appeal No.1866/2011 before this Tribunal on the ground of prematurity and political interference; that this Tribunal also issued status-quo order however Mr. Khalid Aziz (private respondent in Service Appeal No.1866/2011) was not obeying the said order of status-quo which resulted in the registration of FIR u/s 506 by him against the appellant; that the FIR was then quashed by Hon'ble Peshawar High Court D.I.Khan Bench vide judgment dated 15.03.2012 in Cr: Misc:Q No.19 of 2012; that the transfer order was set aside by this Tribunal; that Mr. Khalid Aziz raised audit objections to put the appellant in hot water; that the audit objections were not referred to the Departmental Accounts Committee nor to the Public Accounts Committee rather the reports were directly referred to Secretary Health for appropriate action; that the Secretary Health conducted a fact finding inquiry; that on the basis of fact finding inquiry Dr. Misal Khan and Mr. Nazir Hussain (Ex-Storekeeper) were served with charge sheet and statement


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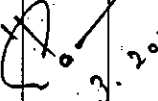
  
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 1.3.2014

of allegation; that in the charge sheet and statement of allegation, the charge of misappropriation/causing loss to government exchequer was leveled in purchase of Medicines and surgical equipments and irregularities of its entries in stock registers, in the DHQ Teaching Hospital D.I.Khan; that the appellants filed reply to the charge sheet and denied all the allegations because the equipment was purchased by the purchase committee and clearly recorded in the stock registers and the equipment was also handed over to the then Storekeeper who issued the equipment to the concerned wards/operation theaters while the medicines were purchased according to Medicines Coordination Cell's List. Next contended that one sided inquiry was conducted without affording any opportunity of self-defense to the appellants and on the basis of the finding of the inquiry report Show Cause Notices were issued to the appellants which were duly replied by the appellants by denying all the allegations; that the original impugned order dated 27.02.2013 was passed whereby penalty of removal from service and recovery of Rs.18.785/- million was imposed upon the appellant Dr. Misal Khan, similarly penalty of removal from service and recovery of Rs. 17.411/- million was imposed upon Mr. Nazir Hussain (Ex-Storekeeper). Next contended that the departmental appeals of the appellants against the original impugned order dated 27.02.2013 went un-responded. Next contended that the impugned order is against law, facts on record and norms of justice; that the whole action of respondent department was based on malafide. Next contended that the audit paras are to be settled by the Departmental Audit Committee, if not then the case is referred to the Public Accounts Committee and

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after that the case of recovery is to be made. Next contended that the appellants have not been treated in accordance with law and punished for no fault on their part rather victimized due to the joint action of Dr. Khalid Aziz and the then D.G Health Services.

5. As against that learned Deputy District Attorney argued that the appellants were involved in misappropriation of public money in purchase of Medicines and surgical equipments and other irregularities including irregularities in entries of Medicines and surgical equipments in stock registers/sub-stock registers for DHQ Teaching Hospital D.I.Khan, resultantly proper inquiry was conducted and besides other irregularities the appellants were found involved in misappropriation of public funds including misappropriation in purchase of Medicines, equipment; further argued that registers of stock, expense, issue were not properly maintained and entries were not found while payments were made; further argued that inquiry was conducted in accordance with law and all the codal formalities were fulfilled prior to the issuance of the penalty.

6. Arguments of learned counsel for the appellant and learned Deputy District Attorney heard. File perused.

7. Perusal of the record/inquiry report would show that the appellants were posted at the DHQ Teaching Hospital D.I.Khan during the financial year 2010-11. Audit Department carried out audit of the hospital's account in the month of July 2011 for the financial year 2010-11 and pointed out irregularities/misappropriation/irregular expenditures. Office of the Director, Regional Office, District Audit D.I.Khan conducted audit in respect of District Govt. Funds released

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1.3.2019

to the DHQ Teaching Hospital D.I.Khan. The Anticorruption Establishment (ACE) District D.I.Khan also simultaneously conducted an open inquiry in the matter. Fact finding inquiry was also conducted. The fact finding committee submitted its report containing observations against Dr. Misal Khan and Mr. Nazir Hussan (Ex-Store Keeper). The Chief Minister then constituted a formal committee for the purpose of scrutinizing the conduct of accused officials Dr. Misal Khan and Mr. Nazir Hussain (Ex-Storekeeper). List of misappropriations and irregularities as given in the inquiry report is as under:

Para No.	Gist of Para	Charge Against	Amount Involved (Rs. in Millions)
1.	Loss to Government due to missing of medicines	Both Accused	Rs.16.512 (M)
2.	Misappropriation of syringes worth Rs.1.937	Both Accused	1.937
3.	Misappropriation on account of purchase of	Both Accused	1.034
4.	Misappropriation of cotton rolls	Both Accused	0.405
5.	Misappropriation of medicines	Both Accused	1.221
6.	Misappropriation on account of purchase of	Both Accused	0.240
7.	Misappropriation on account of purchase of	Both Accused	0.150
8.	Misappropriation of medicines	Both Accused	0.175
9.	Loss to Government due to double drawl and fake	Both Accused	1.547
10.	Loss to Government due to missing medicines	Both Accused	0.366

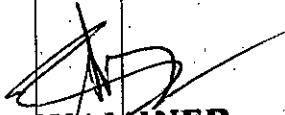
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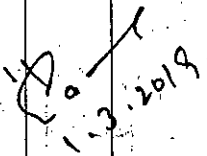
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13.10.19

	11.	Loss to Government due to non accountal of lab chemicals	Dr. Misal Khan	0.445
	12.	Loss to Government due to issue of fictitious issue of	Both Accused	0.210
	13.	Loss to Govt due to misuse of anti-d injections	Both Accused	3.678
	14.	Loss to Govt due to misuse of anti-d injections	Both Accused	0.510
	15.	Loss to Govt due to due to non-accountal in stock	Both Accused	1.595
	16.	Loss to Govt due to acceptance higher rates	Dr. Misal Khan	0.906
	17.	Misappropriation of medicines	Both Accused	1.000
	18.	Misappropriation on account of missing of	Both Accused	0.449
	19(1)	Loss due to missing of medicines	Both Accused	1.654
	19(2)	Over payment due to purchase of medicines on	Both Accused	0.695
	20.	Missing of x-ray films	Dr. Misal Khan	0.500
	21.	Loss to Govt on account of missing of 125 gailon	Dr. Misal Khan	0.100
	22.	Loss to Govt due to misuse of insulin injections	Both Accused	0.660
	23.	Loss to Govt due to missing of medicines	Both Accused	0.458
	24.	Misappropriation of medicines	Both Accused	0.762
	25.	Misappropriation on fake purchase of dressing	Both Accused	0.229
	26.	Overpayment on purchase of	Dr. Misal Khan	1.421


**ATTESTED**

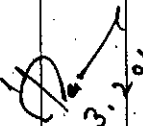
  
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 13/2019

	medical gas on		
27.	Double drawl on purchase of medical gas	Dr. Misal Khan	0.211
28.	Fictitious expenditure due to fake repair of vehicles	Dr. Misal Khan	0.209
29.	Misappropriation due to fake issue of POL for generator	Dr. Misal Khan	0.310
30.	Less deposit of car park & canteen rent	Dr. Misal Khan	0.335
31.	Loss to Govt due to purchase of substandard equipments	Dr. Misal Khan	0
32.	Over payment due to allowing higher rates	Dr. Misal Khan	0.370
33.	Loss to Govt due to fake issue of medical gas	Dr. Misal Khan	0.044
34.	Fictitious expenditure due to fake repair of machinery & equipments	Dr. Misal Khan	0.511
35.	Misappropriation of foam mattress & blankets	Dr. Misal Khan	0.189
36.	Unjustified expenditure on pay to regular charge nurses without rendering service	Dr. Misal Khan	2.591
37.	Loss due to pay to officials without rendering service	Dr. Misal Khan	3.792
38.	Excess payment on account of pay & allowance	Dr. Misal Khan	0.076
39.	Misappropriation of Air-condition	Dr. Misal Khan	1.601
40.	Misappropriation on purchase of Oxygen Cylinders	Dr. Misal Khan	0.066

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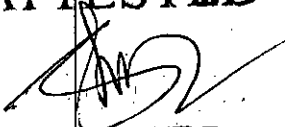


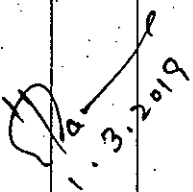
41.	Irregular expenditure on purchase of equipment and medicines	Both Accused	0
42.	Non-recovery of stamp duty	Dr. Misal Khan	0.272
43.	Non-recovery house rent allowance and electricity charge	Dr. Misal Khan	0.636
44.	Fake expenditure on purchase of local medicines	Both Accused	0.653
45.	Misappropriation on purchase of washing and contingency items	Dr. Misal Khan	0.672
46.	Loss due to expendr on operating head over & above budget	Dr. Misal Khan	2.943
47.	Suspected misappropriation on pay and allowances	Dr. Misal Khan	6.152
48.	Less deposit on account of OPD Receipts.	Dr. Misal Khan	0.619
	Total		Rs.64.456 (M)

8. There is no denial that charge sheet/statement of allegation was served upon the appellants. The appellants joined the inquiry proceeding. Show Cause Notices were also served upon the appellant to which they also filed reply. Perusal of the reply of the appellants to the Show Cause Notice would show that the same was prepared after perusal of the inquiry report. In the these circumstances this Tribunal is of the considered view that the learned counsel for the appellant has not been able to substantiate his plea that the mandatory codal formalities were not complied with during the regular inquiry.

9. The inquiry committee in its inquiry report gave finding that the allegations No.1 to 10, 13 to 16, 21 to 26, 28, 41, 44 and 45 stood

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proved, allegation No.19 partly proved while the remaining allegations were not proved.


10. It is not denied that funds worth millions of rupees were released to the DHQ Teaching Hospital D.I.Khan during the incumbency period of the appellants. From the perusal of the inquiry report it transpired that the appellants have not bothered to run the affairs of the hospital in the proper manner rather committed serious irregularities. The appellant have not observed the finance rules & regulations nor adopted the prescribed procedures. The hospital record was not maintained as required.

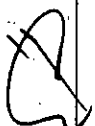
11. The appellants could not give valid explanation to the anomalies observed by the inquiry committee and as such remained unable to demonstrate that they were wrongly held responsible by the inquiry committee.

12. It may also be observed that no evidence/statement of any person was brought into the notice of this Tribunal to reach at the conclusion that the appellants converted the resources/funds of the hospital to their own use or made dealings to pocket the government funds. Moreover it is also not disputed that the audit observations are yet to be finalized by the DAC/PAC. This Tribunal is therefore of the considered opinion that the punishment order regarding recovery of Rs.18.785/- million from Dr. Misal Khan and Rs. 17.411/- million from Mr. Nazir Hussain (Ex-Storekeeper) was premature.

13. In the light of above discussion, the punishment regarding recovery of Rs. 18.785/- million imposed upon the appellant (Dr. Misal Khan) is set aside. Similarly punishment regarding recovery of

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Rs.17.411/7 million imposed upon Nazir Hussain (Ex-Storekeeper) is set aside. While keeping in view the fact that the appellants Dr. Misal Khan and Nazir Hussain (Ex-Storekeeper) had considerable length of service at their credit, for the purpose of safe administration of justice the penalty of removal from service is modified and converted into compulsory retirement. This judgment shall have no bearing upon the liability of the appellants Dr. Missal Khan and Nazir Hussain (Ex-Storekeeper) as determine by the DAC/PAC and the amount of loss to the government exchequer, if any, finalized by the DAC/PAC shall be recoverable from both the appellants Dr. Misal Khan and Nazir Hussain (Ex-Storekeeper) under the law.

14. The present service appeal and the connected service bearing No.1499/2013 filed by Mr. Nazir Hussain (Ex-Storekeeper) are partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)  
Member

(Muhammad Hamid Mughal)  
Member

ANNOUNCED.  
01.03.2019

Date of Presentation of Application 12-03-19  
Number of Words 4000  
Copying Fee 22-00  
Urgent —  
Total 22-00  
Name of Copyist [Signature]  
Date of Completion of Copy 21-03-19  
Date of Delivery of Copy 21-03-19

**Certified to be true copy**  
**EX. NUNER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal,**  
**Peshawar**

To,

The Honourable Secretary Health,  
Khyber Pakhtunkhwa,  
Peshawar.

Subject: **IMPLEMENTATION OF JUDGMENT OF SERVICE APPEAL NO. 1498/2013 TITLED DR. MISSAL KHAN VS THE GOVERNMENT KPK AND OTHERS, DATED 26/07/2013.**

Respected Sir,

With due respect, It is requested to please, implement the above judgment in Service Appeal No. 1498/2013 case titled Dr. Misal Khan Ex. Medical Superintendent, DHQ Teaching Hospital, D.I.Khan VS The Government of KPK through Chief Secretary, Peshawar and others which is passed by Khyber Pakhtunkhwa Service Tribunal, please oblige the undersigned.

Thank you.

Yours Faithful,

  
Dr. MISAL KHAN

Ex. M.S

(DHQ Teaching Hospital)

D.I.Khan

Present Address: Basti Kanera  
Wali, Habib Ullah Khan Marwat  
House, P/O Sheikh Yousaf Abad ,  
Bannu Road, D.I.Khan

Contact # 0346-4474718

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF \_\_\_\_\_

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

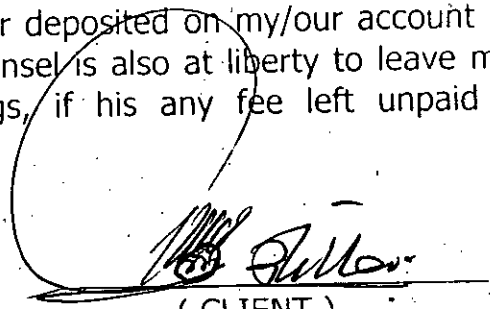
(Respondent)  
(Defendant)

I/We \_\_\_\_\_

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

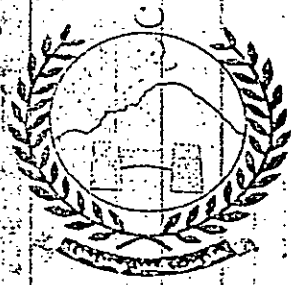
  
( CLIENT )

ACCEPTED

**M. ASIF YOUSAFZAI**  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**  
Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Subject:- EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO  
IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS  
HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

A summary on the above captioned is submitted for approval of Chief  
Minister, Khyber Pakhtunkhwa, please.

CHIEF SECRETARY, KHYBER PAKHTUNKHWA

  
SECRETARY HEALTH 25/11

PRINCIPAL SECRETARY TO CHIEF MINISTER, KHYBER PAKHTUNKHWA



STATE OF KHYBER PAKHTUNKHWA  
Secretary Health



## GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

### SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject:- EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

Health Department initiated disciplinary action against Dr. Misal Khan (BS-19) Ex-Medical Superintendent District Head Quarter Hospital, Dera Ismail Khan and Mr. Nazir Hussain (BS-09) Ex-Storekeeper of District Head Quarter Hospital Dera Ismail Khan (ANNEX-I). The Charges leveled against both the accused were proved, found guilty and accordingly the competent authority tentatively imposed the penalty of Recovery as well as removal from service and later on confirmed the same (ANNEX-II).

2. Aggrieved with the decision both Dr. Misal Khan and Mr. Nazir Hussain filed separate service appeals bearing No. 1498/2013 and 1499/2013 in learned Service Tribunal which were decided by the august tribunal vide judgment dated 01/03/2019 (ANNEX-III). The operating part of the judgment is reproduced hereinafter:-

“the punishment regarding recovery of Rs.18.785/- million imposed upon the appellant (Dr. Misal Khan) is set aside. Similarly recovery of Rs.17.411/- million imposed upon Nazir Hussain (Ex-storekeeper) is set aside. While keeping in view the fact that the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) had considerable length of service at their credit, for the purpose of safe administration of justice the penalty of removal from service is modified and converted into compulsory retirement. The judgment shall have no bearing upon the liability of the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) as



# GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

## SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject: EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

determined by DAC / PAC and the amount of loss to the government exchequer, if any, finalized by DAC / PAC shall be recoverable from both the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper)"

3. The department filed CPLA against the service tribunal judgment and in the meanwhile Dr. Misal Khan (Ex-MS DHQH DIK) filed an Execution Petition No. 211/2019 in service appeal No. 1498/2013 (ANNEX-IV). The Chairman, Service Tribunal while hearing the execution petition passed an order dated 22/10/2019 "Adjourned to 13/11/2019. In case implementation report is not submitted on the next date punitive action will be initiated against the defaulting respondents / official in accordance with law" (ANNEX-V). On 13/11/2019, while hearing the execution Petition No.211/2019 in Service Appeal No. 1498/2013, Chairman Service Tribunal directed to implement the orders as contained in para-2 above (ANNEX-VI).

4. In view of the position explained above, health department submit the following proposal for approval:-

- i. Implementation of service tribunal judgment dated 01/03/2019 subject to the final verdict of Supreme Court of Pakistan in CP pending for hearing.

5. For recovery of the amount from Dr. Misal Khan and Nazir Hussain, PAC has been held on 24/07/2019 in health department and the paras stand which to be decided by PAC as and when scheduled.





GOVERNMENT OF KHYBER PAKHTUNKHW.  
HEALTH DEPARTMENT

**SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA**

Subject: EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

6. Proposal contained in para-4/ante is submitted for approval of Chief Minister, Khyber Pakhtunkhwa.

(MUHAMMAD WAHYA AKHUNZADA)  
SECRETARY HEALTH

CHIEF SECRETARY, KHYBER PAKHTUNKHWA

CHIEF MINISTER, KHYBER PAKHTUNKHWA



# GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

## SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject:- EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

Health Department initiated disciplinary action against Dr. Misal Khan (BS-19) Ex-Medical Superintendent District Head Quarter Hospital, Dera Ismail Khan and Mr. Nazir Hussain (BS-09) Ex-Storekeeper of District Head Quarter Hospital Dera Ismail Khan **(ANNEX-I)**. The Charges leveled against both the accused were proved, found guilty and accordingly the competent authority tentatively imposed the penalty of Recovery as well as removal from service and later on confirmed the same **(ANNEX-II)**.

2. Aggrieved with the decision both Dr. Misal Khan and Mr. Nazir Hussain filed separate service appeals bearing No. 1498/2013 and 1499/2013 in learned Service Tribunal which were decided by the august tribunal vide judgment dated 01/03/2019 **(ANNEX-III)**. The operating part of the judgment is reproduced hereinafter:-

“the punishment regarding recovery of Rs.18.785/- million imposed upon the appellant (Dr. Misal Khan) is set aside. Similarly recovery of Rs.17.411/- million imposed upon Nazir Hussain (Ex-storekeeper) is set aside. While keeping in view the fact that the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) had considerable length of service at their credit, for the purpose of safe administration of justice the penalty of removal from service is modified and converted into compulsory retirement. The judgment shall have no bearing upon the liability of the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) as



# GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

## SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject:- EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

determined by DAC / PAC and the amount of loss to the government exchequer, if any, finalized by DAC / PAC shall be recoverable from both the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper)”

3. The department filed a CPLA against the service tribunal judgment and in the meanwhile Dr. Misal Khan (Ex-MS DHQH DIK) filed an Execution Petition No. 211/2019 in service appeal No. 1498/2013 (ANNEX-IV). The Chairman Service Tribunal while hearing the execution petition passed an order dated 22/10/2019 “Adjourned to 13/11/2019. In case implementation report is not submitted on the next date punitive action will be initiated against the defaulting respondents / official in accordance with law” (ANNEX-V).

4. In view of the position explained above, health department submit the following proposal for approval:-

- i. Implementation of service tribunal judgment dated 01/03/2019 subject to the final verdict of Supreme Court of Pakistan in CPLA pending for hearing and their post-retirement benefits shall remain attached / pending till final verdict of Supreme Court of Pakistan.

5. For recovery of the amount from Dr. Misal Khan and Nazir Hussain, Pre-PAC has been held on 24/07/2019 in health department and the paras stand which will be decided by PAC as and when schedule (ANNEX-VI).

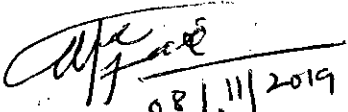


**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

**SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA**

Subject:- EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 01/03/2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT

6. Para-4/ante is submitted for approval of Chief Minister, Khyber Pakhtunkhwa.

  
08/11/2019

**SECRETARY HEALTH**

**CHIEF SECRETARY, KHYBER PAKHTUNKHWA**

**CHIEF MINISTER, KHYBER PAKHTUNKHWA**



# GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

Dated Peshawar the 13<sup>th</sup> Feb, 2020

## NOTIFICATION

No. SOH(E.V)2-161/2007.- WHEREAS, Health Department initiated disciplinary action against Dr. Misal Khan (BS-19) Ex-Medical Superintendent District Head Quarter Hospital, Dera Ismail Khan and Mr. Nazir Hussain (BS-09) Ex-Storekeeper of District Head Quarter Hospital Dera Ismail Khan;

AND WHEREAS, the Charges of loss to the Govt. Ex-chequer worth 18.758 million and 17.411 million on account of corruption were proved against Dr. Misal Khan and Mr. Nazeer Hussain respectively;

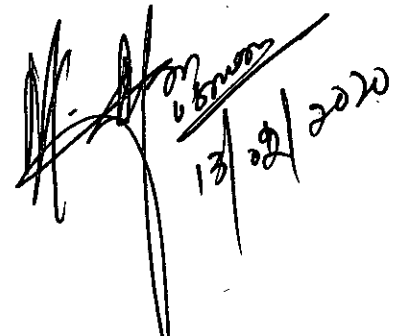
AND WHEREAS, the competent authority imposed upon them penalty of Recovery as well as removal from service vide Notification No. SOH(E.V)2-161/2007, dated 27/02/2013;

AND WHEREAS, Aggrieved with the decision both Dr. Misal Khan and Mr. Nazir Hussain filed Service Appeals No. 1498/2013 and 1499/2013 in Learned Service Tribunal which were decided by the august tribunal vide judgment dated 01/03/2019;

AND WHEREAS, the punishment regarding recovery of Rs.18.785/- million imposed upon the appellant (Dr. Misal Khan) and recovery of Rs.17.411/- million imposed upon Nazir Hussain (Ex-storekeeper) was set aside. While keeping in view the fact that the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) had considerable length of service at their credit, for the purpose of safe administration of justice the penalty of removal from service was directed to be modified and converted into compulsory retirement.

AND WHEREAS, The judgment shall not have bearing upon the liability of the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper) as determined by DAC / PAC and the amount of loss to the government exchequer, if any, finalized by DAC / PAC shall be recoverable from both the appellants Dr. Misal Khan and Nazir Hussain (Ex-storekeeper);

AND WHEREAS, The department filed a CPLA against the service tribunal judgment and in the meanwhile Dr. Misal Khan (Ex-MS DHQH DIK) filed an Execution Petition No. 211/2019 in service appeal No. 1498/2013.





# GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

AND WHEREAS, The Chairman Service Tribunal while hearing the Execution Petition passed an order dated 22/10/2019 "Adjourned to 13/11/2019". In case implementation report is not submitted on the next date punitive action will be initiated against the defaulting respondents/official in accordance with law".

NOW THEREFORE, the competent authority in terms of Rule-4(1)(a) of the Government Servants (Appointment Promotion & Transfer Rule) 1989; read with Rule-2(f) of Government Servants (Efficiency & Discipline) Rules-2011 has been pleased to implement Service Tribunal judgment dated 01/03/2019 subject to the final verdict of Supreme Court of Pakistan in CPLA pending for hearing and convert the Major Penalty of "Removal from Service" imposed vide Notification No. SOH(E.V)2-161/2007, dated 27/02/2013 to "Compulsory Retirement".

SD/-

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Copy of the above is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Director General Health Department, Khyber Pakhtunkhwa, Peshawar.
4. Section Officer (Lit-II), Health Department, Peshawar for information & necessary action.
5. Medical Superintendent, District Head Quarter Hospital, D.I.Khan.
6. Medical Superintendent, Sarhad Hospital for Psychiatric Disease, Peshawar.
7. District Account Officer, D.I.Khan.
8. Concerned Appellant for information.

(MULHAMMAD IRFAN USMAN)

SECTION OFFICER (E-V)  
HEALTH DEPARTMENT

13/02/2020