

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

SERVICE APPEAL NO. 11824 /2020

DR. SADAF JAMIL

V/S

HEALTH DEPARTMENT  
& OTHERS

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Dated: 29-09-2020

Through:

APPELLANT



MUHAMMAD MAAZ MADNI  
ADVOCATE

FLATE NO. 04, 2<sup>ND</sup> FLOOR,  
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,  
WARSAK ROAD, PESHAWAR

0345-9090737, 0314-9965666

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR Khyber Pakhtunkhwa  
Service Tribunal

SERVICE APPEAL NO. 11824 /2020

Diary No. 10808

Dated 29/9/2020

Dr. SADAF JAMIL d/o Muhammad Jamil Khan, WMO (BPS-17)  
H# 322, St# 49, Sector-F, Safari House, Phase-8, Behria Town, Rawalpindi.

.....APPELLANT

VERSUS

1. GOVT. OF KHYBER PAKHTUNKHWA,  
through Chief Secretary, Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. THE SECRETARY, GOVT. OF KHYBER PAKHTUNKHWA,  
Health Department, Civil Secretariat, Peshawar.
3. THE DIRECTOR GENERAL HEALTH SERVICES,  
Khyber Pakhtunkhwa, FATA Secretariat, Warsak Road, Peshawar.

..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE  
INACTION OF THE RESPONDENTS BY NOT  
ADJUSTING/ISSUING PROPER POSTING ORDER IN RESPECT  
OF THE APPELLANT& BY NOT RELEASING MONTHLY SALARY  
OF THE APPELLANT STOPPED SINCE AUGUST 2015 AND  
AGAINST NOT TAKING ANY ACTION ON THE  
DEPARTMENTAL APPEAL DATED 02-06-2020 OF THE  
APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS

PRAYER:

**Filed to-day**  
**Registrar**  
**29/9/2020**  
**Re-submitted to-day**  
**and filed.**  
**Registrar**  
**7/10/2020**

That on acceptance of the instant service appeal the inaction of the respondent by not adjusting/issuing proper posting order in respect of appellant& stopping the monthly salary of the appellant may very kindly be declared as illegal and proper posting order be issued with release of monthly salaries stopped since August 2015 with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

FACTS:

Brief facts which give rise to the instant appeal as under:-

1. That, the appellant is the Law abiding, peaceful & bonafide citizen of Pakistan having domicile of District Mohmand (erstwhile FATA) and is the employee of the respondent Department.
2. That appellant is appointed as Women Medical Officer (BPS-17) on the proper recommendation of the Khyber Pakhtunkhwa Public Service Commission at Serial No. 70 of appointed order dated 05/10/2007 and placed the services of the appellant at the disposal of Ex-Director Health Services FATA.  
Copy of appointment order dated 05-10-2007 is attached as ANNEXURE .....A.
3. That appellantsubmitted her arrival report before Director Health Services FATA on 18/10/2007 and accordingly the appellant was further posted and placed her services in Agency Headquarter Hospital Khar Bajaur Agency now District Bajaur vide order dated 23/10/2007.  
Copy of arrival report & posting order dated 23.10.2007 is attached as ANNEXURE..... B.
4. That the appellant after working for sufficient time was allowed to work as Assistant Director (Technical) in Population Welfare Department of FATA with further direction that the appellant will draw her salary from her original place of posting vide order dated 04.04.2009.  
Copy of order dated 04.04.2009 is attached as ANNEXURE.....C.
5. That appellant was awarded scholarship from Australian Development Scholarship program for Master in Public Health (Epidemiology) in Australia 2012 when the appellant was working as Assistant Director in EPI Cell which was for a period of One Year from January 2012 to December 2012, hence, the appellant submitted application for NOC on 02/08/2011 which was allowed/approved vide notification dated 27/11/2011.  
Copy of Application & Notification dated 27.11.2011 is attached as ANNEXURE.....D.
6. That after successful completion of the training course the appellant came back and submitted her arrival report in Ex-DHS FATA for further posting and as such the appellant was posted as Assistant Director (EPI) FATA with immediate effect vide order dated 13/05/2013 and in response thereof the appellant

submitted her arrival report on the post of Assistant Director EPI FATA.

Copy of Posting Order & arrival report dated 13.05.2013 is attached as ANNEXURE. ....E.

7. That the appellant submitted a request for regularization of her gap period w.e.f 01/03/2013 to 13/05/2013 which was approved and the gap period between 01/03/2013 to 13/05/2013 was regularized vide notification dated 25/06/2013.

Copy of request & approval order dated 25.06.2013 is attached as ANNEXURE.....F.

8. That the appellant has to attend Graduation Ceremony in Australia therefore, the appellant moved an application for Ex-Pakistan Leave from 15<sup>th</sup> June 2014 to 31<sup>st</sup> August 2014, which was forwarded vide letter dated 16/06/2014 and was finally approved vide respondent no. 2 notification dated 11/07/2014.

Copy of Application, forwarding letter dated 16.06.2016 & Notification dated 11.07.2014 is attached as ANNEXURE. .... G.

9. That astonishingly monthly salary of the appellant was stopped from August 2015 by the then Director Health Services FATA vide letter dated 29/07/2015 without showing any cogent/plausible reason or any intimation letter of stopping monthly salary and inquiring the appellant was informed that inquiry has been started against the appellant in a frivolous and ambiguous charge from the office of respondent no. 3 and one Dr. Muhammad Asif (BS-19) Coordinator of (PH) DHO Office Peshawar is nominated as inquiry officer for fact finding inquiry vide order dated 27/03/2015 when the appellant approached the office DHS FATA the appellant was informed that your home address is incorrect that's why not contacted well in time hence the appellant submitted her complete home address along with contact no. to the concerned official in the office of Director Health Services FATA and also informed the official that I have neither changed my contact no. nor closed my email address through which I can easily be contacted.

Copy of order date 27.03.2015, address receipt along with other relevant documents & Impugned order dated 29.07.2015 are attached as ANNEXURE .....H& I.

10. That the appellant was made a pendulum between the office of respondent no. 2 & the then DHS FATA office and finally

received a copy of the fact finding inquiry from the office of respondent no. 2 when the appellant submitted a request for meeting with respondent no. 2 vide application dated 05/08/2016.

Copy of the Application & fact finding inquiry report is attached as ANNEXURE ..... J & K.

11. That the appellant after receiving the fact finding inquiry report also submitted an objection/observation report vide dated 03/11/2016 which was allotted with proper dairy no. 19336 from the office of respondent No. 2 and perused the same by visiting different office including the office respondent no. 1 till March 2017 but no fruitful or any reasonable result has been received to the appellant that deteriorated the mental and physical health of the appellant which lasted recently when the appellant recovered for Fibroid and Uterine Artery Embolization surgery.

Copy of the Objection dated 03.11.2016 and medical reports are attached as ANNEXURE ..... L & M.

12. That when the appellant get a little bit health the appellant filed Departmental Appeal dated 02/06/2020 before respondent no. 2 against not issuing proper posting/adjustment order and stoppage of monthly salaries stopped since August 2015 which was allotted a proper dairy no. 5888, and after laps of 90 when the appellant did not received any response also filed a request for providing a copy of order (if any) passed in response to the departmental Appeal dated 02/06/2020 vide request dated 31/08/2020 but till date no response has been received so far.

Copy of Departmental Appeal dated 02.06.2020 & application dated 31.08.2020 is attached as ANNEXURE ..... N & O.

13. That the appellant having no other efficacious, adequate and alternate remedy but to approach this Honourable Tribunal on the following grounds amongst others:

**G R O U N D S:-**

- A. That act and omission of the respondents by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is against the Law, Rules, Fact & material available on record hence not tenable in the eye of Law and needs interference of this Honourable Tribunal.
- B. That the appellant has not been treated by the respondents in accordance with Law and Rules on the subject noted above and

as such the respondents are clearly violating Article 4, 9, 10-A and 25 of the constitution of Islamic Republic of Pakistan 1973.

- C. That the respondents have not acted in accordance with Law and the rules governing on the subject matter by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 which is illegally stopped since August 2015.
- D. That only a fact finding ex-parte inquiry has been initiated against the appellant upon which objection/observation has been raised over the inquiry conducted but that too was not responded with any fruitful result.
- E. That acts and omission of the respondents while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is nothing but just to harass the appellant by one way or the other.
- F. That monthly salaries of the appellant has been stopped since August 2015 vide the impugned order dated 29.07.2015 which is highly been deprecated by the Apex Supreme Court of Pakistan in its various judgment that salary could not be stopped in anyway and even then the salary of the appellant has not been released.
- G. That, acts and omission on the part of the respondents while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is neither in the public interest nor in the exigencies of service.
- H. That acts and omission of the respondent while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is nothing but performed a misconception of law and under a wrong law hence it had vitiated entire proceedings, which could not be sustained under the law and is liable to be struck down.
- I. That the act and omission on the part of the respondents by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is clear violation of Article- 38 (e) of the Constitution of Islamic republic of Pakistan which states that:  
 "to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan".
- J. That act and omission on the part of the respondents while not adjusting/issuing proper posting order to the appellant and also

not releasing monthly salary stopped since Aug 2015 is also against the Natural Justice and hence liable to be struck down.

K. That any other grounds will be raised at the time of arguments with prior permission of this Honourable Tribunal.

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

Dated: 29-09-2020

Appellant

*Sadaf* / 28/09/2020

DR. SADAF JAMIL

Through

MUHAMMAD MAAZMADNI

Advocate,

High Court, Peshawar.

*28/9/2020*

# (POWER OF ATTORNEY)

87

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. \_\_\_\_\_/2020

DR. SADAF JAMIL

VS

HEALTH DEPTT: & Others

I, Dr. Sadaf Jamil do hereby nominated and appointed **MUHAMMAD MAAZ MADNI**, Advocate, High Court, Peshawar, to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said 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 any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do 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 these present or of the usual practice in such matter. PROVIDED always that I/WE undertake at the time of calling of the case by the court I/MY authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, 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 WHERE OF I/We hereunto set MY/OUR hand to these presents, the contests of which have been explained to and understood by ME/US this 28<sup>th</sup> day of Sep 2020.

EXECUTANT

Sadaf/28/09/2020  
(Dr. Sadaf Jamil)

Accepted subject to the terms regarding fees:



MUHAMMAD MAAZ MADNI, 28/9/2020

ADVOCATE HIGH COURT,

PESHAWAR

BC No. (BC-11-1460)

CNIC No. 17101-9263898-1

OFFICE: KHATTAK LAW ASSOCIATES,  
Juma Khan Plaza, Warsak Road, Peshawar.  
Contact#: 0333-9313113, 0345-9090737



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO. 11824 OF 2020**

Dr. Sadaf Jamil.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa and others.....Respondents

**Respectfully Sheweth:**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**Preliminary Objections:-**

1. That the appellant has got neither cause of action nor did locus standi to file the instant appeal.
2. That the appellant has filed the instant Appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of the necessary parties.

**ON FACTS:**

1. Pertains to record, hence no comments.
- 2-7 Correct.
8. Correct. However, it is pertinent to mention here that:
  - i. The appellant was granted 76 days Ex-Pakistan Leave w.e.f. 15/06/2014 vide Notification dated 11/07/2014 (Annex-A).
  - ii. The appellant was bound to resume her official duties after expiry of her leaves on 30/08/2014 but the appellant did not submit her arrival report.
  - iii. The appellant was adjusted against the vacant post of Assistant Director (Technical) Population Welfare Department FATA for the purpose of pay vide order No. 14451-55/DHS/FATA/Admn dated 04/08/2014 (Annex-B) and surprisingly the appellant

came on the same date to the office of Assistant Director (EPI) who was on leave and handed over the charge.

- iv. The appellant unlawfully retained the official vehicle in her possession for five months and returned the vehicle on 17/01/2015 but without log book.
  - v. Willful absence of the appellant from official duty was reported to Health Department Khyber Pakhtunkhwa vide letter dated 05/03/2015 (Annex-C).
9. Correct. The appellant did not submit her arrival after expiry of Ex-Pakistan Leave on 30/08/2014 and received salary without performing duty upto 2015. When the matter was pointed out, her willful absence was reported to Secretary Health Khyber Pakhtunkhwa and her salary was stopped vide letter dated 29/07/2015 already attached with the Appeal as annexure-I and enquiry was also initiated against the Appellant vide order dated 27/03/2015 already attached with the appeal as annexure-H. The then DHS FATA and enquiry office issued proper notices at her home address vide letters (Annex-D) but the appellant failed to report.
10. Pertains to record, hence no comments.
11. Pertains to record, hence no comments.
12. Pertains to record, hence no comments.
13. Incorrect. In light of the above factual position, the appellant has no right to file the instant appeal.

**ON GROUNDS:**

- A. Incorrect. The act of the Respondents is not against the law and rules because during her Ex-Pakistan Leave, the appellant was posted against the post of Assistant Director (Technical) Population Welfare Department FATA for the purpose of pay vide order dated 04/04/2009 but the appellant did not submit her arrival report after expiry of Ex-Pakistan Leave and absented herself from official duty without further prior leave. Therefore, her salary was stopped.
- B. Incorrect. The Respondents did not violate the Article of the Constitution of Islamic Republic of Pakistan, 1973 as already explained in preceding para.
- C. Incorrect. Detailed reply has already been given in preceding para.
- D. Incorrect. The notices were issued at her home address but the appellant failed to report.
- E. Incorrect. Reply has already been furnished in Para-A.
- F. Correct to the extent of stoppage of her salary due to her willful absence from duty.
- G. Incorrect as already explained in Para-A.

H. Incorrect as already explained in preceding paras.

I. Incorrect as already explained in preceding paras.

J. Incorrect as already explained in preceding paras.

K. The replying respondents also seek prior permission of this Honorable Court to adduce additional grounds at the time of arguments.

**PRAYER:**

It is therefore humbly prayed that on acceptance of the comments, the instant Appeal of the Appellant may very graciously be dismissed with costs.

~~Secretary to Govt of  
Khyber Pakhtunkhwa  
Respondent No. 01~~



Secretary to Govt. of  
Khyber Pakhtunkhwa Health Department  
Respondent No. 02 - I

~~Director General Health Services,  
Khyber Pakhtunkhwa.  
Respondent No. 03~~

~~DD(HR) AA~~



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 11<sup>th</sup> July, 2014

**NOTIFICATION**

**No. SO(H/E-II/1-5/2013:** The Competent Authority is pleased to grant 76-days, Ex-Pakistan Leave, w.e.f. 15.06.2014 or from the date of availing, in respect of Dr. Sadaf Jamil, Assistant Director (BS-17), EPI FATA, Peshawar.

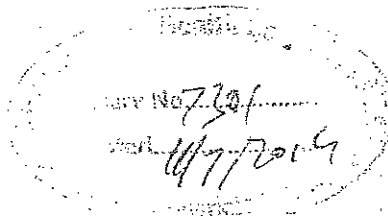
Furthermore, this department has no objection over proceeding abroad of the doctor concerned.

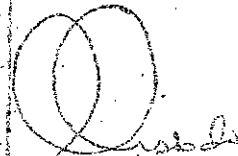
SECRETARY HEALTH  
KHYBER PAKHTUNKHWA

Endst. No. & date even.

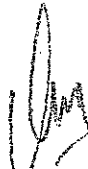
Copy to the:

1. Accountant General, Khyber Pakhtunkhwa.
2. Director General Health Services, Khyber Pakhtunkhwa.
3. DHS FATA Peshawar.
4. PS to Secretary Health.
5. PA to Special Secretary Health.
6. Deputy Director (IT), Health Department.
7. Officer concerned.



  
(Misbah Riaz)  
Section Officer(E-II)

Endorsement

  
11/7/14  
DDA

B  
27

DIRECTORATE OF HEALTH SERVICES FATA  
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

OFFICE ORDER

As approved by the competent authority, the following posting/adjustment of doctors is hereby ordered in the best interest of public service with immediate effect.

S#	Name	From	To	Remarks
1	Dr. Sahibzada Khalid, M.O	Waiting for posting	Assistant Director EPI FATA	Vice No. 2 below
2-	Dr. Sadaf Jamil, WMO	Assistant Director EPI FATA	Assistant Director Technical Population Welfare FATA	Against the vacant post for the purpose of pay.


Sd/-----

Director Health Services  
FATA, Peshawar

No. 14457-55 /DHS/FATA/Admn Dated: 4 / 08 / 2014

Copy forwarded to the:-

- 1- AGPR Sub Office Peshawar.
- 2- Assistant Director EPI FATA.
- 3- Deputy Director Population Welfare FATA.
- 4- PA to Secretary AI&C, FATA.
- 5- Officers concerned.

  
5/8/14  
Director Health Services  
FATA, Peshawar

01/2/14



DIRECTORATE OF HEALTH SERVICES

FATA SECRETARIAT, WARSAK ROAD, PESHAWAR

PH: 091-9210212. Fax: 091-9212150.

No. 6596 /DHS/FATA/Admn

Dated: 5 /03/2015.

The Secretary Health,  
Khyber Pakhtunkhwa, Peshawar.

Subject: WILLFUL ABSENCE FROM DUTY.

Dear Sir,

It is to inform your good office that Dr. Sadaf Jamil was appointed as Woman Medical Officer (WMO) through Public Service Commission vide Notification No. SOH (E-II)/3-18/2007 dated 05-10-2007 and her services were placed at the disposal of Directorate of Health Services FATA for further posting. She was initially posted against the vacant post of WMO at Agency Headquarter Hospital, Bajaur on 23-10-2007. She was, later on, posted as Assistant Director EPI vide Office Order No. 7770-75/DHS/FATA/Admn, dated 13-05-2013.

She forwarded an application for 76 days Ex-Pakistan leave w.e.f 15-06-2014 which was subsequently granted vide Govt. of Khyber Pakhtunkhwa Health Department Notification No. SO(H/E-II)/1-5/2013, dated 11-07-2014. She was bound to resume her official duties after expiry of her leave on August 30, 2014 but she did not submit her arrival report till date.

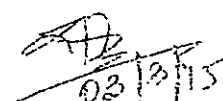
It is pertinent to point out here that she was adjusted against the vacant post of Assistant Director (Technical), Population Welfare Department FATA for the purpose of pay vide Office Order No. 14451-55/DHS/FATA/Admn, dated 04-08-2014, and surprisingly, she came on the same date to the office of Assistant Director EPI though was on leave and handed over the charge and, thereafter did not visit the EPI section of this Directorate as stated by the newly posted Assistant Director EPI in his Note for Record addressed to the Director Health Services FATA. Furthermore, she unlawfully retained the official vehicle in her possession for five months and returned it on 17-01-2015 without Log Book.

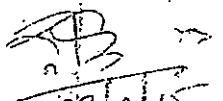
The aforementioned factual status clearly advocates that she has deliberately made herself absent from her legitimate official duties till date and, hence the case is forwarded to your good office for further necessary action in the matter, please.

No. 6597-6600 /DHS/FATA/Admn, dated 5 /03/2015.

Copy forwarded for information to:

1. Secretary Social Sectors, FATA Secretariat, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Director (Admn), DHS FATA, Peshawar.
4. Deputy Director, Population Welfare Department, FATA, Peshawar.

  
03/03/15  
Director Health Services,  
FATA, Peshawar.

  
03/03/15  
Director Health Services,  
FATA, Peshawar.

DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR

No. 20359/DHS/FATA/Admn

Dated: 28 / 09 / 2015

To

Dr. Sadaf Jamil WMO,  
H. No. 90, Street #9,  
Sector L-1, Phase-3 Hayat Abad Peshawar.

Subject:- APPEAL FOR JUSTIFICATION PROVIDED IF JUSTIFICATION STILL EXISTS IN THIS SYSTEM.

Enclosed please find herewith a letter of Director General Health Services, Khyber Pakhtunkhwa along with its enclosure on the subject noted above.

You are directed to appear before the inquiry committee on 06.10.2015 at 10:00AM in the office of Director Administration, Director General Health Services, Khyber Pakhtunkhwa Peshawar.

No. 20360-61 /DHS/FATA/Admn

28/09/15  
Director Health Services,  
FATA, Peshawar

Copy to the:-

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department  
Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa w/r. to his letter  
No. 15748-50/E-I dated 17.09.2015.

28/09/15  
Director Health Services  
FATA, Peshawar



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 640 /ST

Dated: 7-3-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To

The Director General Health Services,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 11824/2020. SADAF JAMIL.

I am directed to forward herewith a certified copy of Judgement dated 26.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR