

**I IN THE COURT OF LEARNED SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA**

In Re:

Service Appeal No. 5785/2020

Hidayat Ullah

.....Applicant / Appellant

**Versus**

Health Department

.....Respondents


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Dated:- 26/05/2023

Hidayat.  
Applicant/Appellant

Through:-

  
**Saifullah Muhib Kakakhel**  
LL.M, Advocate High Court  
Cell # 0334-4440744

(J)

**IN THE COURT OF LEARNED SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA**

In Re:

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

Hidayat Ullah Khan S/o Mir Faraz Khan R/o House No. 233/B, Mohallah  
Rab Nawaz Wakeel, Bannu City.

.....Applicant / Appellant

**Versus**

1. Director General Health, Directorate of Health Services, Khyber Pakhtunkhuwa, Civil Secretariat, Peshawar.
2. Secretary Health, Khyber Pakhtunkhuwa, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhuwa through Chief Secretary, Civil Secretariat, Peshawar.

.....Respondents

**APPLICATION FOR AND ON BEHALF OF APPLICANT/  
APPELLANT FOR RESTORATION OF THE APPEAL  
DISMISSED IN DEFAULT VIDE ORDER DATED 10.04.2023  
BY THIS LEARNED TRIBUNAL.**

**Respectfully Sheweth:**

1. That the above titled case was fixed before this Hon'ble tribunal and was dismissed in default vide order dated 10.04.2023. (Copies of the appeal & order dated 10.04.2023 are attached as **Annexure A & B**).
2. That the appeal dismissed in default has been Fixed for the reply of respondents and the same was pending since long and was still not submitted on the previous date of hearing when the case was dismissed in default.

3. That the hearing before dismissal of the appeal in default we have been given/provided with the date as 19-05-2023 for next appearance and proceedings by the reader of this learned tribunal and the same was written in the cause list while we were informed that no reply has been submitted by the respondent up till now. (Copy of the Cause List of the Honourable Tribunal Dated: 20.02.2023 is attached as Annexure "C")
4. That on 19-05-2023 when the counsel had appeared to bring into the notice of the learned tribunal that the reply of the respondents are pending since long he was astonished to know that the appeal has already been dismissed in default on 10.04.2023 about which he had no knowledge as we have been provided with the date 19.05.2023 for next hearing.
5. That the application is within time and the same has been filed upon getting the knowledge of it as inadvertently the dates has been mentioned wrongly by the reader of this worthy tribunal.
6. That absence of the applicants / appellants and their counsel were neither intentional nor deliberate, but due to the reason mentioned herein above.
7. That there is no legal impediment in restoring the case of the applicant / appellant.

- 8. That the August Supreme Court and High Courts have times and again laid the dicta that cases should be decided on their merit instead of a Lis-Pendis being decided on mere technicalities to knockout a party.
- 9. That any other ground will be taken at the time of hearing with permission of this Hon'ble Tribunal.

*It is therefore respectfully submitted, that on acceptance of this application, the appeal and the interim relief granted therein may kindly be restored in the best interest of justice.*

*Any other order deemed appropriate in the circumstances of the case may also be passed. The applicants / appellants may be allowed to put forward any other argument/document at the time of hearing of this application.*

Hidayat.  
Applicant / Appellant

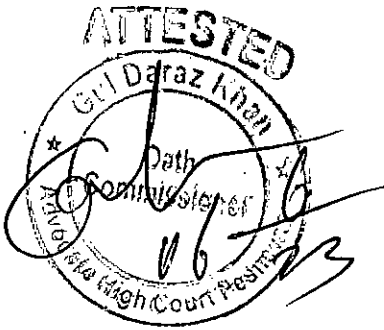
Through:

*Saifullah*  
**Saifullah Muhib Kakakhel**  
LL.M, Advocate High Court  
Cell # 0334-4440744

Dated: 06/06/2023

**AFFIDAVIT:**

I, Hidayat Ullah Khan S/o Mir Faraz Khan R/o House No. 233/B, Mohallah Rab Nawaz Wakeel, Bannu City, do hereby solemnly affirm and declare that the contents of **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

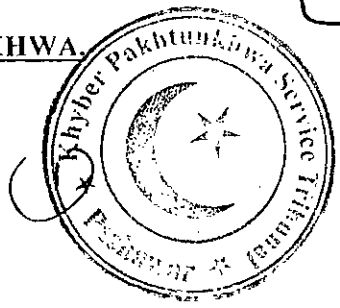


*Hidayat*  
**DEPONENT**

"A" (4)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA.

Service Appeal No. 5785 of 2020



Hidayat Ullah Khan S/o Mir Faraz Khan  
R/o House No. 233/B, Mohallah Rab Nawaz Wakeel, Bannu City.

.....Appellant  
Khyber Pakhtunkhwa  
Service Tribunal

**V E R S U S**

Diary No. 50621  
Dated 16/6/2020

1. Director General Health, Directorate of Health Services, Khyber Pakhtunkhwa , Civil secretariat, Peshawar.
2. Secretary Health, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.

..... Respondents

SERVICE APPEAL UNDER SECTION 04 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE ILLEGAL ACT OF RESPONDENT NO. 01 FOR NOT PROMOTING THE APPELLANT TO THE POST OF CLINICAL TECHNOLOGIST (PATHOLOGY) BPS-17 FROM HIS CURRENT POST AGAINST WHICH HE SUBMITTED DEPARTMENTAL APPEAL ON 28.01.2020 THROUGH PROPER CHANNEL WHICH WAS FILED AND NOT ANSWERED.

Filed on day 16/6/2020  
 Registrar

Respectfully Sheweth:

1. That appellant was appointed as Junior Clinical Technician (Pathology) (BPS-09) by respondent No. 01 vide

**ATTESTED**  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar


"B"  
5

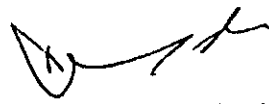
10<sup>th</sup> April, 2023

1. Nobody is present on behalf of the appellant. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

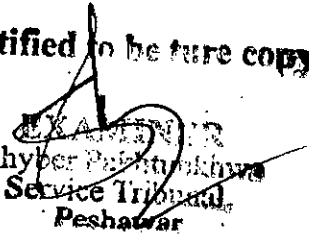
2. Called several times till last hours of the court but nobody turned up on behalf of the appellant. In view of the above, the instant appeal is dismissed in default. Consign.

3. Pronounced in open court at Peshawar and given under our hand and seal of the Tribunal on this 10<sup>th</sup> day of April, 2023.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

**Certified to be true copy**

  
Khatun  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 22/5/23  
Number of Words Page 8  
Copying Fee 10/-  
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Total 48/-  
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Date of \_\_\_\_\_ 22/5/23  
Date of Delivery of Copy 22/5/23

LIST OF SB - I CASES FIXED BEFORE MUHAMMAD AKBAR KHAN, MEMBER (EXECUTIVE)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

20/02/2023 (MONDAY)

PRELIMINARY HEARING

S.NO.	APPEAL NO.	APPELLANT NAME	DEPARTMENT	NEXT DATE
1	103/23	WAQAR ALI	EDU	10-4-23 Pre Admission
2	325/23	KHAIR UN NISA	POLICE	10-4-23
3	327/23	MST. SHAMARANA	EDU	10-4-23 Pre Admission

REPLY

S NO.	APPEAL NO.	APPELLANT NAME	DEPARTMENT	NEXT DATE
1	5785/20	HIDAYAT ULLAH	HEALTH	19-5-23
2	2375/21	IKRAM ULLAH (27)	EDU	✓ 19-5-23 D.B (2000)
3	7088/21	HAKIM ULLAH	EDU	10-4-23
4	7499/21	ARSHAD KHAN	EDU	✓ 19-5-23 DB
5	7799/21	DR. M. ALI	HEALTH	10-4-23
6	1331/22	SHAHID HUSSAIN	EDU	✓ 19-5-23 DB
7	1456/22 (C)	RAFI ULLAH	AGRI	10-4-23

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