

15  
Service Appeal No. 422/2018


2<sup>nd</sup> June, 2023

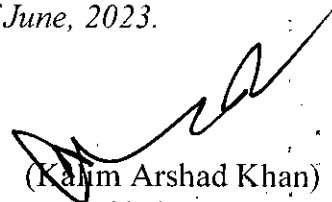
1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondent.

2. Learned counsel for the appellant submits that the grievance of the appellant is going to be resolved outside the court, which resolution may take some time and instead of seeking adjournments, he request that it may be adjourned *sine-die*. leaving the appellant 'at liberty to make an application to get it restored and decided after resolution of the matter in respondent department. Learned Addl. AG has also no objection on the *sine-die* adjournment. Adjourned sine-die accordingly. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 02<sup>nd</sup> day of June, 2023.*

SCANNED  
KPST  
Peshawar

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Kaleem Ullah\*

2nd Nov., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Last chance is given. To come up for arguments on 29.12.2022 before the D.B.



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

29/12/22

Due to winter vacation, the case adjourned to 22.3.23 for the same.

Read

22.03.2023

Learned counsel for the appellant present.

Mr. Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Learned Member Judicial (Mrs. Rozina Rehman) is on leave, therefore, case is adjourned to 01.06.2023 for arguments before D.B. Parcha Peshi given to the parties.



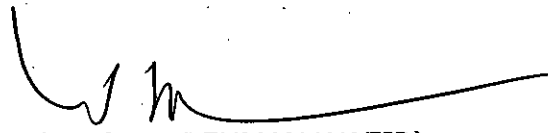
(Muhammad Akbar Khan)  
Member (E)

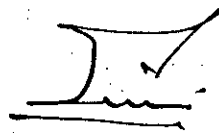
SCANNED  
KPST  
Peshawar

10.11.2021

Mr. Said Khan, Advocate junior of learned counsel for the appellant present. Mr. Javed Ullah, Assistant Advocate General for respondents present.

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is unable to appear before the Tribunal today due to illness. Adjourned. To come up for arguments before the D.B on 10.02.2022.

  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

  
(SALAH-UD-DIN)  
MEMBER (J)

10-02-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 7/6/2022

  
Reader.

07.06.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.


Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 10.08.2022 before the D.B.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

10.8.2022

Proper DB not available the case is adjourned to 2.11.2022

  
Reader

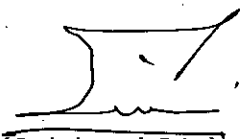
22.06.2021

Mr. Said Khan, Advocate, junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar, therefore, adjournment may be granted. Adjourned. To come up for arguments before the D.B on 13.10.2021.



(Rozina Rehman)  
Member(Judicial)



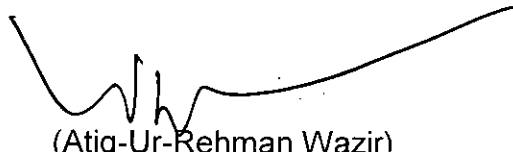
(Salah-ud-Din)  
Member(Judicial)

13.10.2021

Learned counsel for the appellant present.

Mr. Kabjurullah Khattak, Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal bearing No. 387/2018 titled Bakht Zamin Vs. Government, on 10.11.2021 before D.B.



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



(Rozina Rehman)  
Member (J)

Bakht Zamain 422/2018

Postscript

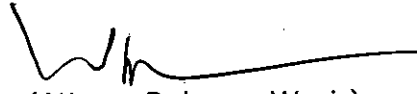
26.05.2021

The order dated 24.03.2021 was written but could not be signed by the D.B including the then Chairman who due to unforeseen reason could not attend the office in coming days. He died in the meantime and the order sheet was left unsigned. To bring the proceedings of appeal on track, it is become expedient for ex-post facto completion of the order sheet. The unsigned order dated 24.03.2021 is reproduced below which be given effect accordingly:-

"Junior to counsel for the appellant and Mr. Riaz Khan Paindakhel, learned Asst. AG for respondents present.

Former requests for adjournment due to illness of learned senior counsel for the appellant.

Adjourned to 22.06.2021 for arguments before D.B."

  
(Atiq-ur-Rehman Wazir)  
Member

  
Chairman

01.10.2020

Junior to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Request for adjournment is made due to engagement of learned senior counsel before the Hon'ble High Court in many cases today. The matter is adjourned to 22.12.2020 for hearing before the D.B.



(Mian Muhammad)  
Member (Executive)



Chairman

22.12.2020

Due to COVID-19, the matter is adjourned to 24.3.21 for the same.



Reader

24.03.2021

Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Asst. AG for respondents present.

Former requests for adjournment due to illness of learned senior counsel for the appellant.

Adjourned to 23.06.2021 for arguments before D.B.

Chairman

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

28.02.2020

Junior to counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. Adjourn. To come up for arguments on 14.04.2020 before D.B.

  
Member

  
Member

14.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 03.07.2020 before D.B.

  
Reader

03.07.2020


Due to COVID19, the case is adjourned to 01.10.2020 for the same as before.

Reader

27.08.2019

Counsel for the appellant and Addl. AG alongwith Danyal Ahmad, Store Keeper for the respondents.

Respondents have not submitted written reply/comments despite last opportunity was granted to them on 01.07.2019. The appeal is, therefore, posted to D.B for arguments on 14.10.2019.

  
Chairman

14.10.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General alongwith Mr. Shah Nawaz Junior Clerk for the respondents present. Representative of the respondents department submitted written reply which is placed on file. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceedings on 24.12.2019 before D.B.

  
Member

  
Member

24.12.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 28.02.2020 before D.B.

  
Member

  
Member



10.04.2019

Counsel for the appellant present. Mr. Aziz Rehman M.S  
Bajaur representative of the respondents present.

Counsel for the appellant has submitted an application for amending the word "FATA" to "Merged Area" as mentioned in the penal of respondents.

The application is allowed and the office is directed to make requisite amendment in the memorandum of appeal and thereafter, issue notice to all the respondents for the submission of written reply and comments on 16.05.2019 before S.B

  
Chairman

16.05.2019

Junior to counsel for the appellant present. Written reply not submitted. Daud Jan Superintendent representative of the respondent department absent. He be summoned with the direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B. Respondents be also put to notice for reply/comments.

  
Member

01.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Written reply not submitted. None present on behalf of the respondents department, therefore, notice be issued to the respondents to attend the court and submitted written reply/comments. Last opportunity is granted. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.

  
Member

30.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 06.02.2019 for written reply/comments before

S.B.


  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

06.2.2019

Nemo for appellant. Addl. AG for the respondents present.

Learned AAG requests for adjournment for submission of written reply by the respondents. Adjourned to 28.02.2019 before S.B.

The appellant may submit a list of respondents under their fresh nomenclature, if any, after merger of FATA on the next date.

  
Chairman

28.02.2019

No one present on behalf of appellant. Written reply not submitted. Daud Jan Superintendent representative of the respondents absent. He be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 10.04.2019 before S.B.

  
Member

22.9.2018

Due to muharram ul haram  
vacations the case was not  
heard on 20.9.2018 Adjourned  
for 7-11-2018

A 111

*Y. S. S.*  
READER

7-11-2018

Due to Retirement of Honorable Chairman  
the Tribunal is non functional therefore the  
case adjourned to come for the Bench on  
25-12-2018

*Y. S. S.*  
Reader

26.12.2018

Learned counsel for the appellant present. Written reply not  
submitted. Daud Jan Superintendent representative of the  
respondent department absent. Adjourn. To come up for written  
reply/comments on 30.01.2019 before S.B. Notice be  
issued as per mdtg.

*C. S.*  
Member


27.06.2018

Counsel for the petitioner present. Arguments on restoration of appeal heard. Record reveals that service appeal was dismissed in default on 05.06.2018. Learned counsel for the petitioner submitted application on 11.06.2018 for restoration of the same. The application is well within time therefore, restoration application is accepted and the appeal is restored. To come up for arguments on 08.08.2018 before D.B. Notice be also issued to the respondents accordingly.

  
(Muhammad Amin Khan Kundi)  
Member


08.08.2018

Learned counsel for the applicant and learned AAG for the respondents present. Adjournment requested. Adjourned. To come up for further proceedings on 03.09.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

03.09.2018




Learned counsel for the applicant and Mr. Kabirullah Khattak, Additional Advocate General, for the respondents present. Written reply not submitted. Therefore, notices be issued to the respondents for written reply/comments. Adjourned. To come up for written reply/comments on 21.09.2018 before S.B

  
(Muhammad Amin Kundi)  
Member

Form-A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal's Restoration Application No. 183/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1.	2	3
1	11.06.2018	<p>The application for restoration of appeal no. 422/2018 submitted by Mr. Noor Muhammad Khattak 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</p>
2		<p>This restoration application is entrusted to S. Bench to be put up there on <u>25/6/18</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	25.06.2018	<p>Counsel for the petitioner present. Learned Additional AG on behalf of respondents present. Adjourned. To come up for reply and arguments on 27.06.2018 before S.B.</p> <p style="text-align: right;"> Member</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

C.M NO. 183 /2018  
IN  
SERVICE APPEAL NO.422/2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 667

Dated 11-6-2018

**ADAM KHAN**

**VS**

**A.C.S FATA**

**APPLICATION FOR RESTORATION OF THE ABOVE MENTIONED APPEAL**

**R/SHEWETH:**

- 1- That the above mentioned service appeal was pending adjudication before this august Tribunal in which 05.06.2018 date was fixed for hearing.
- 2- That appellant filed the above mentioned appeal against the adjustment of his original post i.e. Pharmacy Technician in light of the Agency Cadre Policy.
- 3- That due to non appearance of the Counsel for appellant the above mentioned appeal of the appellant has been dismissed by this august Tribunal vide order/ judgment dated 05.06.2018. Copy of the order/judgment is attached as annexure.....**A.**
- 4- That on the same date Counsel for the appellant was busy before the Hon'ble Peshawar High Court Peshawar and when he came to attend the above mentioned appeal but unfortunately the same was dismissed due to non presence of counsel for the appellant.
- 5- That the non appearance of the Counsel for appellant was neither deliberate nor intentionally but caused due to the above mentioned reason.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned service appeal No.422/2018 may very kindly be restored.

Dated: 11.05.2018.

**APPLICANT**

  
**ADAM KHAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

C.M NO. \_\_\_\_\_/2018  
IN  
SERVICE APPEAL NO.422/2018

**ADAM KHAN**

**VS**

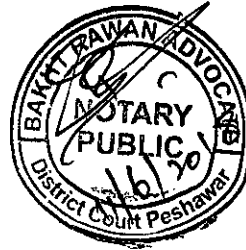
**A.C.S FATA**

**AFFIDAVIT**

I Noor Mohammad Khattak Advocate, on the instruction and on behalf of my client do hereby solemnly affirm that the contents of this **application for resotoration** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**ATTESTED**



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

APPEAL NO. 422 /2018



Mr. Adam Khan, Pharmacy Technician (BPS-12),  
Agency Headquarter Hospital, Bajaur Agency.

..... APPELLANT

**VERSUS**

*merged Area*

- 1- Additional Chief Secretary (~~FATA~~), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services (~~FATA~~), FATA Secretariat, Warsak Road, Peshawar. *merged Area*
- 3- The Agency Surgeon, Bajaur at Khar. *District*
- 4- The Pharmacy Superintendent, AHQ Hospital Bajaur Agency.

.....RESPONDENTS

*Order sheet  
Date  
19/02/19*

**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE INACTION OF THE RESPONDENTS BY  
NOT ADJUSTING THE APPELLANT ON HIS ORIGINAL  
POST OF PHARMACY TECHNICIAN IN LIGHT OF THE  
AGENCY CADRE POLICY AND AGAINST NOT TAKING  
ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE  
APPELLANT WITHIN THE STATUTORY PERIOD OF  
NINETY (90) DAYS**

05.06.2018.

Appellant absent. Learned counsel for the appellant absent. Learned Additional Advocate General present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be consigned to the record room.

Certified to be true copy

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 6-6-18  
 Number of Words 400  
 Copying Fee 4  
 Urgent 4  
 Total 4  
 Name of Copyist Amis  
 Date of Completion of Copy 7-6-18  
 Date of Delivery of Copy 7-6-18



Service Appeal No. 422/2018

08.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 03.07.2018.



Reader

22.05.2018

Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply not submitted. Learned Additional AG seeks adjournment. Adjourned. To come up for written reply/comments on 05.06.2018 before S.B. The restraint order shall continue till the date fixed.



(Muhammad Amin Khan Kundi)

Member

05.06.2018

Appellant absent. Learned counsel for the appellant absent. Learned Additional Advocate General present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be consigned to the record room.

**ANNOUNCED**

**05.06.2018**



Member

23.04.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that the appellant was appointed as Pharmacy Technician vide order dated ~~28.12.2006~~<sup>09</sup> on contract basis. That later on he was regularized on ~~10.11.2008~~<sup>21.11.2011</sup>. It was further contended that the government also issued policy regarding Agency cadre vide order dated 25.05.2009. That on the basis of such Agency cadre policy the appellant submitted application from North Waziristan to Bajaur Agency. It was further contended that in the light of the said policy the appellant was transferred from North Waziristan to Bajaur Agency but against the vacant post of Chief Blood Bank Technician till proper posting of original incumbent of the post vide order dated ~~03.10.2013~~<sup>20.6.2013</sup>. It was further contended that four posts of the Pharmacy Technician has been created for financial year 2017-18 and the respondent-department are going to recruit other people on the said post, although the appellant is entitle for adjusting on the same post, therefore, he filed departmental appeal which was not responded, hence, the present service appeal. Learned counsel for the appellant contended that the appellant was transferred to Bajaur Agency on the wrong post vide order dated ~~03.10.2013~~<sup>20.6.2013</sup> till proper posting of original incumbent of the post, therefore, the respondent-department are bound to adjust the appellant on the said post instead of recruiting the other people.

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments on 04.05.2018 before S.B.

*In the mean while status quo be maintained till date*

*M.A.*  
(Muhammad Amin Khan Kundi)

Member



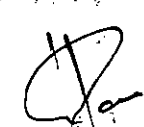
Appellant Deposited  
Security & Process Fee

Form-A

FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 422/2018

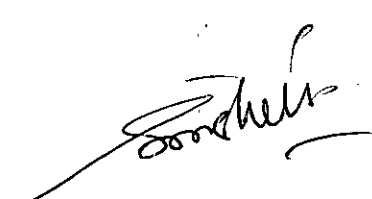
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29/03/2018	<p>The appeal of Mr. Adam Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 29/3/18</p>
2-	<p>09/04.</p> <p>11.04.2018</p>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/04/18.</u></p> <p>Counsel for the appellant  and seeks adjournment. Adjourned. To come up for preliminary hearing on 23.04.2018 before S.B.</p> <p style="text-align: right;"><b>CHAIRMAN</b>  Members</p>

The appeal of Mr. Adam Khan Pharmacy Technician Agency Headquarters Hospital Bajaur Agency received today by i.e. on 16.03.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of order dated 29.7.2016 mentioned in para-4 of the memo of appeal (Annexure-F) is not attached with the appeal which may be placed on it.

No. 574 /S.T,

Dt. 19/03 /2018

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Noor Muhammad Khattak Adv. Pesh.

*Note:*

*Sir,*

*That the date of order dated 20.6.2013<sup>as</sup> has wrongly been mentioned due<sup>to</sup> clerical mistake i.e. 29.7.2016 which is 20.6.2013. Hence the present appeal may be put up before the bench.*

*19/3/2018.*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 422 /2018

*Adam Khan*

VS

**A.C.S FATA & OTHERS**

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**APPELLANT**

THROUGH:

  
**NOOR MUHAMMAD KHATTAK**  
**ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 422 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 406

Dated 16-3-2018

Mr. Adam Khan, Pharmacy Technician (BPS-12),  
Agency Headquarter Hospital, Bajaur Agency.

..... APPELLANT

**VERSUS**

*Merged Area*

- 1- Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar. *Merged Area*
- 3- The Agency Surgeon, Bajaur at Khar. *District.*
- 4- The Pharmacy Superintendent, AHQ Hospital Bajaur Agency.

.....RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING THE APPELLANT ON HIS ORIGINAL POST OF PHARMACY TECHNICIAN IN LIGHT OF THE AGENCY CADRE POLICY AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY (90) DAYS**

**PRAYERS:**

That on acceptance of this appeal the inaction of the respondents may be declared as illegal and unwarranted upon the rights of the appellant. That the respondents may be directed to adjusted the appellant on his original post of Pharmacy Technician (BPS-12) at Bajaur Agency under the Agency Cadre policy. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as under:-**

That appellant is the bonafide resident of Bajaur Agency and was initially appointed as Pharmacy Technician (BPS-09) now (BPS-12) in NW Agency by Respondent No.2 vide appointment order dated 9.12.2006 after fulfilling all the codal formalities required for the post. Copy of the appointment order is attached as annexure..... A.

*order sheet  
Date 10/04/18*

*Filed to day  
16/3/18  
Registrar*

*Re-submitted to -day  
and filed.*

*Registrar -  
29/3/18*

- 2- That the appellant took over the charge of his post at the assigned station and started performing duties quite efficiently, whole heartedly and up to the entire satisfaction of his high ups, in the meanwhile the appellant was issued regularization order dated 21.1.2011. Copy of the regularization order is attached as annexure ..... **B.**
- 3- That being the bonafide resident of Bajaur Agency the appellant submitted application for his transfer from North Waziristan Agency to Bajaur Agency under the agency cadre policy of the respondent Department. That the said application was properly corresponded between respondents and finally the appellant was transferred from North Waziristan Agency to Bajaur Agency. Copies of the Agency cadre policy, CNIC and Domicile are attached as annexure ..... **C, D & E.**
- 4- That, unfortunately the appellant was not adjusted on his original post of Pharmacy Technician but was adjusted on the post of Chief Blood Bank Technician at Agency Headquarter Hospital Khar Bajaur Agency vide office order dated ~~20.6.2013~~. Copy of order is attached as annexure ..... **F.**
- 5- That, appellant time and again requested the respondents for his adjustment against the original post of Pharmacy technician but recently it came into the knowledge of the appellant that some post of Pharmacy Technicians have been sanctioned for the newly constructed Trauma Center at Bajaur Agency for which the appellant filed an appeal/request which was not respondent to the appellant till date. Copy of the Departmental Appeal is attached as annexure ..... **G.**
- 6- That appellant having no other remedy but to file the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That by not adjusting the appellant on his original post is against the law, facts and norms of natural justice.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the respondents acted in arbitrary and malafide manner by not adjusting the appellant on his original post of Pharmacy Technician.
- D- That the respondents are intentionally not adjusting the appellant against his original post of Pharmacy Technician but they are just to accommodate their blue eyed persons on the said post.
- E- That the post held by appellant is not his original post on which he was initially appointed in light of Appointment, promotion and transfer Rules 1989 but the respondents malafidely adjusted the appellant to another which is a post falling vacant due to non availability of its original incumbent.
- F- That the respondents discriminated the appellant on the subject noted above and as such the respondents violated their own policy regarding agency cadre.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 13-03-2018

APPELLANT



**ADAM KHAN**

THROUGH:



**NOOR MOHAMMAD KHATTAK**

&



**MUHAMMAD MAAZ MADNI**  
ADVOCATES, PESHAWAR



**BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL**  
**PESHAWAR**

**APPEAL NO \_\_\_\_\_/2018**

**ADAM KHAN**

**VS**

**A.C.S FATA & OTHERS**

**APPLICATION FOR RESTRAINING THE**  
**RESPONDENTS NOT TO FILL UP THE POST OF**  
**PHARMACY AND MEDICAL TECHNICIANS TILL THE**  
**DISPOSAL OF THE ABOVE MENTIONED APPEAL**

**R/SHEWETH:**

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so far.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the inaction of the respondents by not adjusting the appellant on his original post is against the Civil Servant Act 1973 as well as the appointment, promotion and transfer Rules 1989.
- 4- That the inaction of the respondents by not adjusting the appellant on his original post is also violative of agency cadre policy.
- 5- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the respondents may be restrained that not to fill up the posts of Pharmacy and Medical Technicians at Bajaur Agency till disposal of this appeal.

**APPELLANT**

  
**ADAM KHAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**DIRECTORATE OF HEALTH SERVICES FATA**  
Governor's Secretariat Warsak Road Peshawar

A-5

Office Order

On the recommendation of the Departmental Selection Committee the competent authority is pleased to appoint Mr/Ms. Adam Khan S/DAN/O Hashim Khan as Dispenser BPS 06 on contract basis on the terms and conditions laid down below:

1. His/Her appointment shall be for a period of 3 years / till the life of the project from the date of his/her joining in services and shall be extended on his satisfactory performance.
2. He/She is declared medical fit for this job.
3. His/Her appointment is purely on contract basis (prescribed under Government of NWFP Contract Policy 2002) till the availability of post and he / she shall be bound to serve for at least 5 years in FATA.
4. His/ Her appointment is non-transferable. Moreover spouse policy and district cadre policy shall not be applicable to him/ her.
5. Either party can terminate this contract with 60 days notice or pay in lieu thereof.
6. He/She shall be dealt in accordance with rules and regulations applicable to contract employees under contract policy 2002.
7. He/She shall not indulge in any trade, business and any other activity what so ever which has been declared prohibited for the Government Servants in Civil Servant Act 1973.
8. He/She shall be entitled for all those allowances admissible under the rules.
9. He/She will not be entitled for any TA/DA for joining service and the offer shall be automatically held cancelled if he/she fails to join the duty in 15 days of the receipt of this offer.
10. He/She shall be posted anywhere in FATA.
11. The appointment shall be declared null and void and penalty be imposed in accordance with the prevalent law if the documents are proved tempered or bogus.
12. Prescribed affidavit shall be submitted as per format endorsed prior to join duty.

If he/she accepts the above terms and conditions, he/ she is directed to report for duty to the Agency Surgeon/ Medical Superintendent Muhammad Nazim Khan for further posting with in Agency.

Sd/xxxx

Dr Muhammad Zubair Khan  
Director Health Services FATA  
Peshawar  
11/2/2006.

No. 1529-35 /DHS/Admin/FATA Dated 09  
Copy for information an necessary action to:

1. AGPR, Sub Office Peshawar.
2. Deputy Director Admin DHS FATA.
3. Agency Surgeon / Medical Superintendent NWA
4. Agency Account Officer / EDO
5. Accountant Local Office, DHS FATA Peshawar
6. Dealing Assistant for record DHS FATA
7. Official Concerned.

**ATTESTED**

*[Handwritten signature]*

*[Handwritten signature]*

Deputy Director (Admin)  
DHS FATA Peshawar



**DIRECTORATE HEALTH & POPULATION  
WELFARE FATA PESHAWAR**

B-6

**OFFICE ORDER:**

In pursuance to Government of NWFP, Civil Servants (Amendment) Act -2005, read with Government of NWFP, Establishment & Administration Department (Regulation Wing Notification No. SO-VI (Regulation) (E&D)1-13/2005 dated 10/08/2005 the services of Mr. Adam Khan S/o Hashim Khan appointed as Dispenser BPS.09 vide office order No. 1529-35/DHS/FATA/Admn/ dated 09/12/2006 presently attached the Agency Surgeon, North Waziristan at Miranshah is hereby regularized from the date of her first appointment/charge assumption as Dispenser BPS-09.

He will be for all intents and purposes are intents are civil servants except the purpose of pension and gratuity, in lieu thereof, he will be entitled to receive contributory provident fund. For the said fund 10% will contribute by the Civil Servants concerned in the prescribed manner. Provided further that in the event of death of the Civil Servant, whether before or after retirement his family shall be entitled to receive the said amount, if it has already not been received by concerned civil servant.

Sd/xxx  
Director Health Services  
FATA, Peshawar

No. 827-30 /DHS/FATA/Admn dated Peshawar the 21/1 /2011  
Copy forwarded to the:-

1. Director General Health Services NWFP, Peshawar.
2. Agency Surgeon North Waziristan at Miranshah.
3. Agency Accounts Officer North Waziristan at Miranshah.
4. Official concerned.

**ATTESTED**

Director Health Services  
FATA, Peshawar



GOVERNMENT OF NWFP  
HEALTH DEPARTMENT

Dated the Peshawar 25<sup>th</sup> May 2009

①  
②  
③  
④  
⑤  
⑥  
⑦

NOTIFICATION.

No. SOH-III/8-90/2009 (FATA). The Governor of the North West Frontier Province (NWFP), in his capacity as agent to the President of Islamic Republic of Pakistan for FATA has been pleased to delegate powers of appointing authority to Director Health Services FATA, Political Agents and the Agency Surgeons for appointment against posts in the Health sector given hereunder:-

Sr.No.	Pay Scale	Appointing Authority
1.	Posts up to BPS-15 in the FATA Directorate.	Director of Health Services FATA.
2.	Posts in BPS-11 to BPS-15 in an Agency.	Political Agent of the concerned Agency.
3.	Posts in BPS-10 and below in an Agency.	Agency Surgeon of the concerned Agency.

Secretary to Govt. of NWFP,  
Health Department.

Endst No. of even No and Date.

Copy forwarded for information to:



1. Secretary to Governor NWFP.
2. Principal Secretary to Chief Minister, NWFP.
3. Accountant General, NWFP.
4. Secretary to Govt. of NWFP, Establishment Department.
5. Secretary to Govt. of NWFP, Administration and Coordination Department FATA Secretariat NWFP Peshawar.
6. Director General Health Services, NWFP.
7. Director Health Services, FATA.
8. All Political Agents.
9. All Agency Surgeons in FATA.
10. PS to Chief Secretary NWFP.
11. PS to Secretary Health, NWFP.
12. Programmer, Health Department, NWFP.

RECEIVED  
HEALTH DEPARTMENT  
PESHAWAR  
25/5/09

*[Handwritten signature]*

Section Officer (H-III)

*[Handwritten signature]*



*[Handwritten signature]*  
25/5/09



ATTESTED  
*[Handwritten signature]*





8

حکومت پاکستان  
 اوی سنسٹیشن کارڈ  
 16102-8129416-9  
 علی ارشد خان  
 25/04/1972

ATTESTED

V3S0BV 16102-8129416-9  
 08/11/2021 08/11/2011  
 1298104721

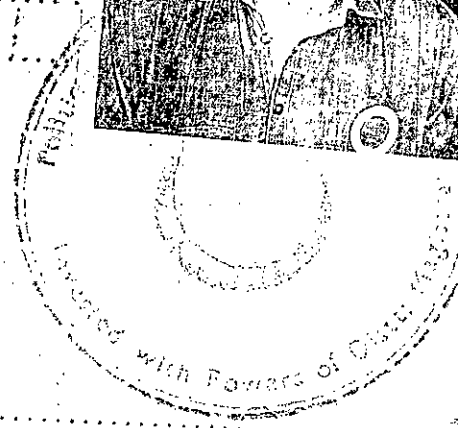





E-9

GS&PD. NWFP-2037 P.A.B.A. 5000F. 5-5-1987-(1)

DOMICILE CERTIFICATE

I solemnly affirm that I, Adam Khan  
son of Khasham Khan, Tribe Utmankhail  
Section Alizai, Sub-section Amanat Khail  
Village Batai, Tehsil Khar  
belongs to a recognised tribe of Utman Khail  
that my father is a bona fide resident of the Tribal Areas of Bajaur Agency.

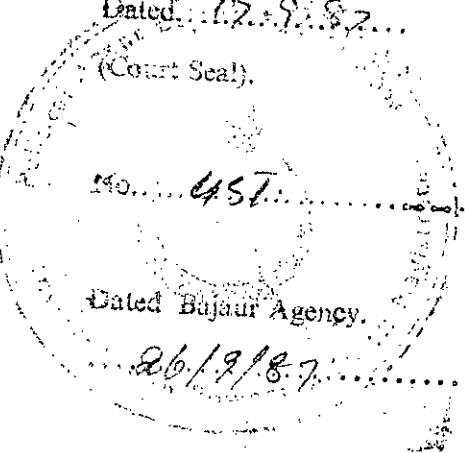


Signature/L.T.I. of applicant. Adam Khan  
Date.....

Certified that Mr. Adam Khan  
son of Khasham Khan, Tribe Utman Khail  
Section Alizai, is a bona fide resident of Village Batai  
Tehsil Khar, Bajaur Agency as verified by his Sectional Malik and is of  
CATEGORY.....

Verified to be correct.....  
Signature of A. P. A. [Signature]  
Name Sheh Wali Khan  
Bajaur Agency at Khan  
Dated 17.9.87

Signature of P. T. [Signature]  
Name Siraj-ud-Din Khan  
Tehsil Khar  
Dated 19/9/87



ATTESTED

COUNTERSIGNED  
MASOOD-UR-REHMAN Masood  
POLITICAL AGENT  
BAJAUR AGENCY

# DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

## OFFICE ORDER

F-10

As approved by the competent authority, the following posting/transfer of Charge Nurses (EPS-16) is hereby ordered in the interest of public service with immediate effect.

S #	Name	From	To	Remarks
1	Miss. Salma,	Charge Nurse AHQ: Hospital Ghallanai	Charge Nurse AHQ: Hospital Landikotal	Against the vacant post
2	Miss. Shaheen	Charge Nurse AHQ: Hospital Ghallanai	Charge Nurse AHQ: Hospital Landikotal	Against the vacant post
3	Miss. Norcen Begum	Charge Nurse AHQ: Hospital Bajaur at Khar	Charge Nurse AHQ: Hospital Ghallanai	Vice No. 1 above.
4	Mr. Adam Khan	Pharmacy Tech: working against the post of Charge Nurse at CH: Jamrud	AHQ: Hospital Bajaur at Khar	Vice No. 3 above.
5	Miss. Rukhsana Parveen	Charge Nurse AHQ: Hospital Miranshah	Charge Nurse CH: Jamrud	Vice No. 4 above.

.....sd.....  
Director Health Services,  
FATA, Peshawar.

No. 100/7-21 /DHS/FATA/Admin

Dated. 20 /06/2013

Copy to the:

1. Secretary Social Sectors Department FATA.
  2. Agency Surgeon Khyber at Jamrud.
  3. Medical Superintendent AHQ: Hospitals Landikotal, Ghallanai, Bajaur and Miranshah.
  4. Agency Accounts Officers Khyber, Mohmand, Bajaur and Miranshah.
  5. Officials concerned.
- For information and further necessary action.

ATTESTED

Director Health Services,  
FATA, Peshawar.

حکومت صوبہ سندھ کے زیر نگرانی  
گورنمنٹ ایجوکیشن سرجن، لاہور

درخواست: پرائمری اسکول

صوبہ عالی اور دیارہ گورنمنٹ ایجوکیشن سرجن کے پاس  
07-2008 میں بطور ڈسٹریکٹ ایجوکیشن آفیسر جو اس وقت  
کوئٹہ میں باجوڑ ایجنسی کوئی ٹیچرنگ کر رہا ہے  
سید ساجد کو ایجنسی ڈسٹریکٹ ایجوکیشن آفیسر کے طور پر  
دوسرے ایجنسی میں کام کر رہا ہے۔ اس کے علم میں آتا  
ہے کہ چند ایجنسیوں میں بطور ایجنسی آفیسر ہے۔  
اس لیے اسے وہاں سے ایجنسی ڈسٹریکٹ ایجوکیشن آفیسر کے طور پر  
کوئٹہ کے ایجنسی ڈسٹریکٹ ایجوکیشن آفیسر کے طور پر

العارض

تاریخ 5/12/17

Adnan  
آدم خان  
ڈسٹریکٹ ایجوکیشن آفیسر  
باجوڑ ایجنسی

ATTESTED  
4



**VAKALATNAMA**

Before the KPK Service Tribunal Peshawar

OF 2018

Adam Khan

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

A-C-S FATA & Others

(RESPONDENT)  
(DEFENDANT)

I/We Adam Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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 cost. 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.

Dated. \_\_\_/\_\_\_/2018

CLIENT

Adam Khan

ACCEPTED

**NOOR MOHAMMAD KHATTAK**

&

**MUHAMMAD MAAZ MADNI  
ADVOCATES**

OFFICE:

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

# **BEFORE THE SERVICES TRIBUNAL**

**KHYBER PAKHTUNKHWA, PESHAWAR**

**APPEAL NO. 422 / 2019**

Mr. Adam Khan Pharmacy Technician (BPS-12)  
DHQ Hospital, Bajaur at Khar----- Appellant

**VERSES**

Additional Chief Secretary (FATA) and others----- Respondents

<b>S NO.</b>	<b>DETAIL</b>	<b>PAGE NO.</b>	<b>Description</b>
1	Para wise Comments	1-2	
2	Letter of M.S. DHQ Hospital Bajaur	3	A

# **BEFORE THE SERVICES TRIBUNAL**

## **KHYBER PAKHTUNKHWA, PESHAWAR**

**APPEAL NO. 422 / 2019**

Mr. Adam Khan Pharmacy Technician (BPS-12)  
DHQ Hospital, Bajaur at Khar----- Appellant

**VERSES**

Additional Chief Secretary (FATA) and others----- Respondents

Reply / comments on behalf of the Respondents No. 1, 2, 3 & 4

Respected Sheweth

### **Preliminary objections**

1. That the appellant has not yet submitted departmental appeal.
2. That the appellant has got no locus standi to file the instant appeal.
3. That the appellant has not come to this Honorable Court with clean hands.
4. That the appellant has got no cause of action to file the instant appeal.
5. That, the appellant is not an "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

### **FACTS**

1. Incorrect, the appellant was appointed as Dispenser BPS-6 on contract basis for a period of 3 years and posted in NW Agency and now is working as Pharmacy Technician BPS-12 at DHQ Hospital Bajaur.
2. Pertains to record.
3. Incorrect, the appellant was transferred from Khyber Agency to AHQ Hospital Bajaur vide office order attached with the appeal. It is pertinent to mention here that as per para-4 of Terms and Conditions of the appointment order, the post was non-transferrable, moreover, spouse policy and district cadre policy was also not applicable upon him. However, the appellant was transferred from Khyber Agency to Bajaur Agency.
4. Incorrect, the appellant has misguided the Honorable Court by stating that the appellant was adjusted against the post of Chief Blood Bank Technician. In fact, as per letter of the Medical Superintendent DHQ Hospital Bajaur at **Annex-A**, the appellant was adjusted against the

post of Charge Nurse for the purpose of drawl of salary due to non-availability of his original post.

5. Incorrect, the appellant has not submitted departmental appeal. As far as sanction of new posts for the Trauma Centre at DHQ Hospital Bajaur is concerned so it is stated that these posts have been filled by transfer of Pharmacy Technician belonging to Tribal District Bajaur and working in other Tribal Districts, under District Cadre Policy. Now there is no vacant post of Pharmacy Technician in DHQ Hospital Bajaur.
6. The appellant has no right to file the instant appeal as he is getting salary regularly.


### GROUNDS

- A- Incorrect. Due to non-availability of his original post, the appellant was adjusted against the post of Charge Nurse for the purpose of drawl of salary till date.
- B- Incorrect, as stated above.
- C- Incorrect, as stated in Para 1 to 6 above.
- D- Incorrect, as stated in Para – 5 above.
- E- Incorrect, as stated in above paras.
- F- Incorrect as stated in above paras.
- G- The Department will also raise other grounds at the time of arguments.

As the vacant position of Pharmacy Technician is not available at DHQ Hospital Bajaur at the moment, therefore, it is humbly prayed that the appeal may please be dismissed.

  
District Health Officer  
Tribal District Bajaur

Respondent No. 3.

  
Medical Superintendent,  
DHQ Hospital Khar.  
Tribal District Bajaur

Respondent No. 4

  
Director Health Services,  
Merged Areas Peshawar

For Respondent No. 1 & 2

**OFFICE OF THE MEDICAL SUPERINTENDENT  
DHQ, HOSPITAL BAJAUR AT KHAR.**

No. 4327 /C-6/MS Phone Office 0942-221200 Dated Khar the 28 / 8 /2019.

To,

The Director Health Services  
Merged Areas Peshawar.

Attention: Faiz  
Mohd: Sb

Subject: - **POSTING OF PARAMEDICAL STAFF/ COURT CASE.**

Sir,

Kindly refer to your office telephonic message today on 2/8/2019.  
The following paramedical staff members were posted by the Directorate Health Services  
Merged Areas Peshawar in this hospital against the posts noted against each:-

Sr.#	Name	Designation with BPS	Working against
1	Noor-ul Islam	Pharmacy Tech: (BS-12)	Working against the post of Chief blood bank Technician (BS-16)
2	Adam Khan	-do-	Working against the post of Charge Nurse (BS-16)
3	Bakht Zamin	-do-	-do-
4	Muhammad Zahid	Medical Technician (BS-12)	Working against Chief Pathology Technician (BS-16)

*(Signature)*  
Medical Superintendent,  
DHQ, Bajaur at Khar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

C.M NO. 183 /2018  
IN  
SERVICE APPEAL NO.422/2018

Khyber Pakhtunkhwa  
Service Tribunal

Entry No. 667

Dated 11/06/2018

ADAM KHAN

VS

A.C.S FATA

**APPLICATION FOR RESTORATION OF THE ABOVE  
MENTIONED APPEAL**

**R/SHEWETH:**

- 1- That the above mentioned service appeal was pending adjudication before this august Tribunal in which 05.06.2018 date was fixed for hearing.
- 2- That appellant filed the above mentioned appeal against the adjustment of his original post i.e. Pharmacy Technician in light of the Agency Cadre Policy.
- 3- That due to non appearance of the Counsel for appellant the above mentioned appeal of the appellant has been dismissed by this august Tribunal vide order/ judgment dated 05.06.2018. Copy of the order/judgment is attached as annexure.....**A.**
- 4- That on the same date Counsel for the appellant was busy before the Hon'ble Peshawar High Court Peshawar and when he came to attend the above mentioned appeal but unfortunately the same was dismissed due to non presence of counsel for the appellant.
- 5- That the non appearance of the Counsel for appellant was neither deliberate nor intentionally but caused due to the above mentioned reason.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned service appeal No.422/2018 may very kindly be restored.

Dated: 11.05.2018.

APPLICANT

  
ADAM KHAN

THROUGH:

  
NOOR MOHAMMAD KHATTAK  
ADVOCATE

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

C.M NO. \_\_\_\_\_/2018  
IN  
SERVICE APPEAL NO.422/2018

**ADAM KHAN**

**VS**

**A.C.S FATA**

**AFFIDAVIT**

I Noor Mohammad Khattak Advocate, on the instruction and on behalf of my client do hereby solemnly affirm that the contents of this **application for resotoration** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**ATTESTED**



A-3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

APPEAL NO. 422 /2018

Mr. Adam Khan, Pharmacy Technician (BPS-12),  
Agency Headquarter Hospital, Bajaur Agency.



..... APPELLANT

**VERSUS**

- 1- Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Surgeon, Bajaur at Khar.
- 4- The Pharmacy Superintendent, AHQ Hospital Bajaur Agency.

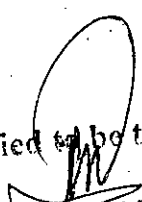
.....RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE INACTION OF THE RESPONDENTS BY  
NOT ADJUSTING THE APPELLANT ON HIS ORIGINAL  
POST OF PHARMACY TECHNICIAN IN LIGHT OF THE  
AGENCY CADRE POLICY AND AGAINST NOT TAKING  
ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE  
APPELLANT WITHIN THE STATUTORY PERIOD OF  
NINETY (90) DAYS**

05.06.2018

Appellant absent. Learned counsel for the appellant absent. Learned Additional Advocate General present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be consigned to the record room.

Certified to be true copy

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 6-6-18

Number of Words 400

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