


FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 612/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05.09.2023	<p>The implementation petition of Mr. Irfan Ullah Khan submitted today by Mr. Muhammad Saleem Khan Marwat Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on _____ . Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution Petition No. 612 OF 2023

In Service Appeal No. 2067/2019

Decided on 23/11/2021

Irfan Ullah Khan

Versus

Govt. of Khyber Pakhtunkhwa etc

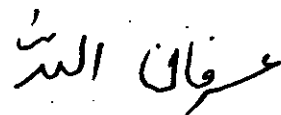
EXECUTION PETITION

INDEX

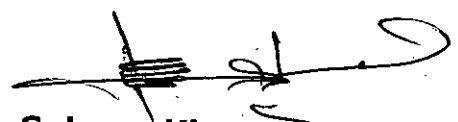
S.No	Particulars of the Documents	Annexure	Page
1)	Grounds of Execution petition with affidavits	--	1-3
2)	Copy of the judgment dated 23/11/2021	--	4-7(a)
3)	Copy of appointment order of petitioner dated 07/06/2014	--	8
4)	Copy of office order No. 280-84 dated 17/02/2022	--	9
5)	Wakalatnama	--	10-11

17, 2023

Humble Petitioner



Irfan Ullah Khan
Through


M. Saleem Khan Marwat
Advocate High Court

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Execution Petition No. 612 OF 2023
In Service Appeal No. 2067/2019
Decided on 23/11/2021

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 7364
Dated 5/9/23

Irfan Ullah Khan son of Ghaffar Khan caste Kundi
presently serving as Naib Qasid DHQ Hospital Tank.

(Petitioner)

Versus

- 1. The Govt. of Khyber Pakhtunkhwa through Health Department KPK Peshawar.**
- 2. The Director General Health Department Khyber Pakhtunkhwa Peshawar.**
- 3. Medical Superintendent DHQ Hospital Tank.**

(Respondents)

EXECUTION PETITION

That the petitioner hereby applies for execution of the Judgment herein below as follows:

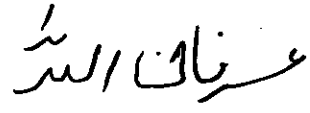
1	Suit No.	Service Appeal No. 2067/2019
2	Name of Parties	Irfan Ullah Khan son of Ghaffar Khan caste Kundi presently serving as Naib Qasid DHQ Hospital Tank (PETITIONER) VERSUS 1. The Govt. of Khyber Pakhtunkhwa through Health Department KPK Peshawar. 2. The Director General Health Department Khyber Pakhtunkhwa Peshawar. 3. Medical Superintendent DHQ Hospital Tank. (RESPONDENTS)
2	Date of Judgment	23/11/2021
3	Whether any Appeal preferred from	Nil

	Department	
4	Previously execution petition is filled or not	Nil
5	Relief granted in the judgment	The appeal of the appellant is accepted. The impugned order dated 27/02/2019 is set aside and the appointment order of the appellant stands restored. The intervening period may be treated as leave without pay.
6	Amount of Costs, if any	Nil
7	Against whom to be executed	Respondents
8	Mode in which the assistance of the court if required	After announcement of the judgment dated 23/11/2021 the respondents reinstated the service of petitioner from the date of judgment i.e. 23/11/2021 which is against the norms of judgment because the petitioner is entitled to be reinstated from the date of appointment i.e. 07/06/2014 and is also entitled to get the benefit of promotion, annual increments and all other dues except salaries/pay of intervening period.

It is therefore, humbly prayed that the instant petition may kindly be accepted and the respondents may kindly be directed to reinstate the service of petitioner from 07/06/2014 and awarded him all the back benefits i.e. promotion, annual increments and all other benefits except monthly salaries/pay.

Aug 17, 2023

Humble Petitioner



**Irfan Ullah Khan
Through**



M. Saleem Khan Marwat
Advocate High Court
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution Petition No. _____ OF 2023
In Service Appeal No. 2067/2019
Decided on 23/11/2021

Irfan Ullah Khan
Versus
Govt. of Khyber Pakhtunkhwa etc

AFFIDAVIT:

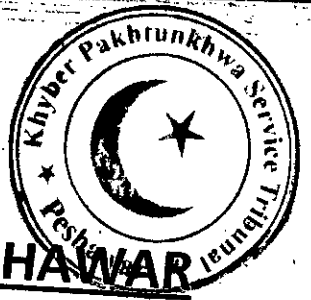
I, **Irfan Ullah Khan**, the petitioner, do hereby solemnly affirm and declared on Oath that all the contents of the petition are true and correct to the best of my knowledge and belief and no other petition on the same subject matter was filed earlier.

Deponent
Irfan Ullah Khan

عرفان اللہ

05 SEP 2023





④

BEFORE SERVICE TRIBUNAL KPK PESHAWAR

S.T.A No. 2067 2019

Irfan ullah Khan S/O Abdul Ghaffar Khan Caste Kundi presently Niab Qasid D.H.Q Hospital *Tank*

Appellant
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2189

Dated 23/12/19

VERSUS

K.P.K

1. Government of Secretary Health Peshawar.
2. The Director Health Services KPK Peshawar.
3. District Health Officer District Tank.
4. Medical Superintendent DHQ Hospital Tank.

Respondents

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER BEARING NO.765-69 DATED 27-02-2019 VIDE WHICH THE SERVICES OF THE APPELLANT HAVE BEEN WITHDRAWN AS WELL AS AGAINST THE ORDER OF APPELLATE AUTHORITY QUA THE DEPARTMENTAL APPEAL WAS NOT RESPONDENT/~~REJECTED~~ WITHIN A STIPULATED PERIOD.

PRAYER

On acceptance of the instant appeal the order bearing No 765-69 dated 27-02-2019 passed by the district health officer Tank may kindly be set-aside and the services of the Appellant be reinstated/ Appellant and be allowed to keep continue his services with all back benefits.

Respectfully Sheweth,

1. That the Appellant was appointed as Naib Qasid in the DHQ Hospital Tank on the basis of disabled Quota vide office order bearing No.1405-08 dated 07-06-2014 by the DHQ Tank. Copy of the appointment order is enclosed as Annexure A. And service book is enclosed as Annexure A/1.
2. That after obtaining Medical Certificate and submitted it with the joining report. Appellant resumed his duty in the DHQ Hospital Tank, and since then the Appellant is working/ performing his duty to the entire satisfaction of his superiors. Copy of the Medical Certificate along with Joining Report is enclosed as Annexure B.
3. That the requested the respondent's authorities time and again for releasing the salaries but no head have been given to the requests of the Appellant.
4. That the Appellant then submitted a Departmental appeal/ representation to the Respondents No 3/2 (Director General Health Services) for redressal of the grievances response of which not been received, within the stipulated period. Copy of Departmental appeal is enclosed as Annexure C.
5. That thereafter Appellant submitted service appeal before this Honorable Tribunal which was later on withdrawn on 26-08-2011 on the ground that the Respondents authorities has submitted the impugned order of withdrawal of the appointment order of the appellant, initiated during pendency of Appeal. Copy of the appeal, copy of application for withdrawal and order of Tribunal for submitting fresh Appeal and along with impugned order enclosed as Annexure D,E,F.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed to Day
23/12/19
Registrar

In file
Am

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN

Service Appeal No. 2067/2019

Date of Institution ... 23.12.2019

Date of Decision ... 23.11.2021



Irfan Ullah Khan S/O Abdul Ghaffar Khan Caste Kundi Presently Naib Qasid D.H.Q Hospital.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa Secretary Health Peshawar and three others.

... (Respondents)

MR. SHEIKH IFTIKHAR-UL-HAQ,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts as alleged by the appellant in his appeal are that he was appointed as Naib Qasid in DHQ Hospital Tank on disable quota, vide office order bearing No. 1405-08 dated 07.06.2014; that the appellant submitted arrival report and joined his duty, however the respondents did not pay him salary, therefore, the appellant submitted departmental appeal, however the same was not responded within the statutory period; that the appellant then filed service appeal

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

before this Tribunal, however during the proceedings of the said appeal, the respondents submitted copy of impugned order dated 27.02.2019, whereby the appointment order of the appellant was withdrawn, therefore, upon the request of the appellant, the said service appeal was withdrawn vide order dated 26.08.2019; that the impugned order dated 27.02.2019 was challenged by the appellant through filing of departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has argued that the appellant was properly appointed as Naib Qasid on disable quota vide order dated 07.06.2014; that the appellant submitted his arrival report on 08.06.2014 and his service book was also prepared; that the appellant regularly performed his duty, however he was not paid any salary and his appointment order was wrongly and illegally withdrawn by the competent Authority vide order dated 27.02.2019; that the appellant was neither issued any show-cause notice nor an opportunity of personal hearing or defense was provided to him; that the impugned order of withdrawal of appointment order of the appellant being wrong and illegal is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney while controverting the arguments of learned counsel for the appellant has argued that appointment order of the appellant was illegal as no post of Naib Qasid was available in DHQ Hospital Tank at the relevant time; that the appellant has neither submitted any arrival report nor he has performed any duty; that the appointment order of the appellant being wrong and illegal was rightly withdrawn by the competent Authority,

J.T.

ATTESTED

 EXAMINER
 Khair Pakhtunkhwa
 Service Tribunal
 Peshawar

therefore, the appeal in hand is liable to be dismissed with cost.


5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that in light of offer of appointment issued by District Health Officer Tank vide Notification No. 1405-8 dated 07.06.2014, the appellant submitted his arrival report to the Medical Superintendent DHQ Hospital Tank on 08.06.2014. The appellant was medically examined and his service book was also prepared. The appointment order of the appellant was issued on 07.06.2014, which was withdrawn after a span of more than four years vide order dated 27.02.2019 on the ground of non-availability of vacant post. Nothing is mentioned in the impugned order that the appointment order of the appellant was procured through any fraud or misrepresentation being attributed to the appellant. Before passing of the impugned order, neither an opportunity of hearing was provided to the appellant nor any inquiry was conducted for ascertaining of the fact as to whether any post of Naib Qasid was available or not. The procedure so adopted by the respondents has caused prejudice to the appellant and he has been condemned unheard.

J. I.

7. It has been time and again held by the august superior court that in case of any illegal appointment being made, action is required to be taken against the Authority who made appointment instead of penalizing the employee. The available record does not shows that any action was taken against the Authority, who issued the appointment order of the appellant. It is an admitted fact that after his appointment, the appellant had performed his duty till issuance of withdrawal order of his appointment dated 27.02.2019, therefore, the principle of locus Poenitentiae would not permit the competent Authority

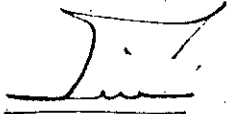
ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

to undue his appointment on the ground that there was any irregularities/defects in the process of his appointment.

8. In view of the foregoing discussion, the appeal in hand is accepted. The impugned order dated 27.02.2019 is set-aside and the appointment order of the appellant stands restored. The intervening period may be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.11.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN


(AHMAD SULTAN TAREEN)
CHAIRMAN
CAMP COURT D.I.KHAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 05/9/23
Number of Words Page 5
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 05/9/23
Date of Delivery of Copy 05/9/23

8

م/س - لہ قاسم

OFFICE OF THE DISTRICT HEALTH OFFICER TANK.



No: 1405-81

Dated: 7 / 06 / 2014.

To

Mr. Irfan Ullah S/O Abdul Ghaffar
R/O Muhammad Akbar Tank.

Subject:-

OFFER OF APPOINTMENT.

Memo

The Govt: hereby offers you a post of Naib Qasid against the vacant post (Disable Quata) in DHQ Hospital Tank in BPS-01 Viz: @ Rs 4800-150-9300/-PM plus usual allowances as admissible under the rules and subject to revision time to time on the following terms and conditions according to the Government Policy.

1. Your appointment in the Health Department is purely on temporary Basis and your services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that you may belong to a post other than one to which you are recruited.
2. You have to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You will be governed by such rules and orders relating to leave, TA, Medical charges as may be issued by the Govt: from time to time for the category of Government Servant to which you may belong.
4. If you accept the offer on the above conditions you should report to this for further duty within fifteen (15) days of the receipt of this letter, failing which your services will be terminated.
5. The appointment will be subject to the production of Medical Fitness Certificate.

DISTRICT HEALTH OFFICER TANK

Cc: -

1. MEDICAL Superintendent DHQ Hospital Tank.
2. District Accounts Officer Tank.
3. Account Clerk of this Office.
4. Estab: Clerk of this office.

DISTRICT HEALTH OFFICER TANK

Attested & Verified by Advocate Salim Shabazz to be true copy.

Signature



**OFFICE OF THE MEDICAL SUPERINTENDANT
DISTRICT HEADQUARTER HOSPITAL TANK**

No: - 280-84

Dated: - 17/02/2022

OFFICE ORDER: -

In compliance of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar Camp Court at DIKhan Decision vide Appeal No. 2067/2019 & judgment issued on Dated 23/11/2021 as Naib Qasid Class IV.

It is significant to mention that there is no vacant post of Naib Qasid at DHQ Hospital Tank, there in conformity of decision by court, office order issued vide No. 280-84, Dated 17/02/2022 are hereby restored and the said incumbent is hereby adjusted/posted against the vacant post of Charge Nurse BPS-16 at DHQ Hospital Tank on his own pay and scale for the purpose of drawl of pay and allowances conditionally on the outcome of CPLA.

**MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK**

No & Date even,

Copy to: -

1. The Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar Camp Court at DIKhan vide appeal number and judgment dated mentioned above.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. The District Account Officer Tank for necessary action please.
4. Official concerned.
5. Record.

**MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK**

Attested & Verified
by Advocate
Salim Shahzad
to be true copy



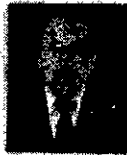
**KHYBER PAKHTUNKHWA
BAR COUNCIL**

ADVOCATE HIGH COURT

MUHAMMAD SALEEM KHAN

Advocate
bc-10-4892

Date of Issue: September 2018
Valid upto: September 2024



Secretary
KP Bar Council

(10)

In the event of joining or withdrawing from any other profession, business or industry, the member will not be entitled to sue the Bar Council without the prior approval of the Bar Council.

Father's Name: MUHAMMAD AKRAM KHAN
Address: MARWAT COLONY NEAR NIZAM PETROL PUMP BAHRU ROAD D.I. KHAN 8301879666
Contact No: 8301879666
Enrolment Date LC: 12-October-1995
Enrolment Date HC: 18-August-2000
Place of Practice: D.I. KHAN
Date of Birth: 10-January-1970
Blood Group: O-VE
C.NIC No: 12201-8737130-3

KHYBER PAKHTUNKHWA BAR COUNCIL
Bar Council of Khyber Pakhtunkhwa, Peshawar, Pakistan. Phone: 0301-879666, Fax: 0301-879667
www.kpbarcouncil.com, www.kpbarcouncil.org

WAKALATNAMA

Before Honorable Khyber Pakhtunkhwa Service Tribunal
DERA ISMAIL KHAN. *Peshawar Bench D.I. Khan*

Khan Ullah Khan Plaintiff /Appellant /Petitioner/Complainant/ Accused

Vs
Grant of KPK etc Defendant/Respondent/ Complainant/ Accused

KNOW ALL to whom these present shall come that I/We.....*Khan Ullah Khan*..... do hereby appoint **Muhammad Saleem Khan Marwat Advocate High Court**(herein after called the advocate/s) to be my/our Advocate in the above noted case authorise him:-

1. To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/us.
2. To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.
3. To file and take back documents, to admit and/or deny the documents of opposite party.
4. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
5. To take execution proceedings.
6. To deposit, draw and receive monthly cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
7. To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.
8. And I/We the undersigned do hereby agree to rectify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.
9. And I/We undertake that I/We or my/our duly authorised agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.
10. And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case.
11. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.
12. And I/We the undersigned to hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this day 17 Aug. 2023

Accepted

[Signature]
Muhammad Saleem Khan Marwat
Advocate High Court
District Bar, Dera Ismail Khan.

[Signature]



KHYBER PAKHTUNKHWA
BAR COUNCIL

ADVOCATE HIGH COURT

SALIM SHAHZAD

Advocate
bc-12-3989
Date of Issue: March 2020
Valid upto: March 2023



Secretary
KP Bar Council

(11)

Father's Name: BAHADAR KHAN
Address: KUNDI HOUSE KHAN STREET BAHNU, ROAD
THEBIL 8 DISTRICT D.I. KHAN
Contact No: 03018798745
Enrolment Date L.C:10-September-2013
Enrolment Date H.C:20-November-2015
Place of Practice: D.I. KHAN
Date of Birth: 26-March-1969
Blood Group: 'A+'
C.N.I.C No: 12101-1584258-7

KHYBER PAKHTUNKHWA BAR COUNCIL
Bar Council Building, Bahnu Road, Peshawar. Ph: 0301-8798745, 0301-8798746
E-mail: kpcbar@kpcbar.org, kpcbar@kpcbar.com

WAKALATNAMA

Before Honourable Judge Service Tribunal Peshawar Bench
Khan Ullah Khan Plaintiff /Appellant /Petitioner/Complainant/ Accused : D.I. KH-
Govt of K.P.K Defendant/Respondent/ Complainant/ Accused
Vs

KNOW ALL to whom these present shall come that I/We Khan Ullah Khan do hereby appoint **SALEEM SHAHZAD KUNDI ADVOCATE HIGH COURT** (herein after called the advocate/s) to be my/our Advocate in the above noted case authorise him:-

- To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/us.
- To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.
- To file and take back documents, to admit and/or deny the documents of opposite party.
- To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
- To take execution proceedings.
- To deposit, draw and receive monthly cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.
- And I/We the undersigned do hereby agree to rectify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.
- And I/We undertake that I/We or my/our duly authorised agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.
- And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case.
- The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.
- And I/We the undersigned to hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this...17...day of Aug.....2023.

Accepted

Saleem Shahzad Kundi
Advocate High Court
District Bar, Dera Ismail Khan.

عمر خان الرحمان