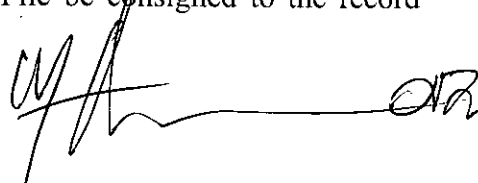


Execution Petition No. 52/2016
Asif Khan vs Health Deptt

28.10.2016

Petitioner with counsel and Dr. Muhammad Shafiq, Medical Officer alongwith Addl. AG for respondents present. Representative of the respondent-department submitted implementation report. Since the judgment of this Tribunal has been implemented hence, the instant execution petition is hereby dismissed as satisfied. The petitioner may however, seeks any other remedy if allowed by law. File be consigned to the record room.



(MUHAMMAD AAMIR NAZIR)
Member

ANNOUNCED:
28.10.2016

E.P. No. 52/2016
Asif Khan vs Govt

03.06.2016

Petitioner with counsel and Addl. AG
alongwith Yar Gul, Asstt. for the respondents present.
Departmental appeal of the petitioner not decided and
condition laid down in para-7 of the judgment dated
01.0.2015 of this Tribunal not answered. Last
opportunity is granted to appellate authority i.e.
respondent No. 1 for the decision of the departmental
appeal within 7 days from the date of receipt of this
order of to-day. To come up for implementation report
on 12.08.2016 before S.B.

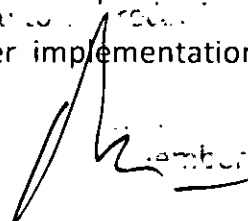

Chairman

12.08.2016

Counsel for the petitioner, Dr. Muhammad

12.08.2016

Shafiq, Medical Officer and Yar Gul, Asstt. alongwith Addl.
AG for the respondents present. Learned Addl. AG
requested for adjournment. On the previous date of
hearing the respondent-department was granted seven
days time for scrutinizing the case of the petitioner and
submission of implementation report but they have not
complied with the previous order sheet, hence last
opportunity is granted on the request of learned Addl.
AG. To come up for proper implementation report on
28.10.2016 before S.B.

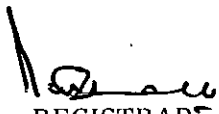



Member

Member

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 52/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31.03.2016	<p>The Execution Petition of Mr. Asif Khan submitted today Rizwanullah 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-	01-04-2016	<p>This Execution Petition be put up before S. Bench on <u>13-04-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
13.4.2016		<p>Counsel for the petitioner present. Notice be issued to the respondents. To come up for implementation report on 3.06.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. 52 /2016

1. Asif Khan, Malaria Supervisor, office of the Executive District Officer (Health) Nowshera.

PETITIONER

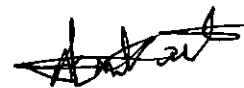
VERSUS

1. The Director General Health, Khyber Pakhtunkhwa Peshawar and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Execution Petition	—	1-4
2	Affidavit	—	5
3	Copy of order/judgment dated 1-10-2015	“A”	6-8
4	Vakalatnama	—	—



Petitioner

Through

Dated: 31-3-2016



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. 52 /2016

**K.P. Province
Service Tribunal**

Diary No. 24/4

Dated 31-3-16

1. Asif Khan, Malaria Supervisor, office of the Executive District Officer (Health) Nowshera.

PETITIONER

VERSUS

1. The Director General Health, Khyber Pakhtunkhwa Peshawar.
2. The Executive District Officer (Health), Nowshera .
3. The District Co-ordination Officer, Nowshera .
4. The District Accounts Officer, Nowshera.

RESPONDENTS

**APPLICATION UNDER SECTION
7 (2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 FOR
EXECUTION OF
ORDER/JUDGMENT DATED
1-10-2015 PASSED BY THIS
HON'BLE TRIBUNAL IN
SERVICE APPEAL NO. 820/2012.**

RESPECTFULLY SHEWITH,

Short facts giving rise to the present execution application are as under:-

1. That the petitioner was appointed as Malaria Supervisor (BPS-9) on 15-2-2008 after observing all legal and codal formalities. He was medically examined and thereafter he submitted his arrival report.

2. That the petitioner was performing his duty with great zeal, zest and devotion but he was not paid his legitimate pay/salary. Therefore, he felt aggrieved, filed a departmental appeal but the same was not responded within the statutory period of law.
3. That thereafter, the petitioner invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No. 820/2012 praying therein that the respondents may graciously be directed to release his pay alongwith arrears.
4. That this Hon'ble Tribunal was pleased to dispose of the said appeal with the following observations vide order/judgment dated 1-10-2015:-

“Since departmental appeal of the appellant was not responded by the department, therefore, the tribunal deems it appropriate to refer the matter to the appellate authority to decide the same in the light of the following observations of this tribunal:-

- i) **Whether appointment letter had been issued to the appellant by the competent authority?**
- ii) **Whether the appellant was medically examined, performed duties and also received or not at all any salary, and**

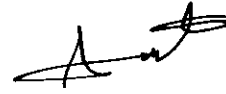
iii) Whether appellant is similarly placed person as Umer Hayat etc. mentioned in the judgment of the august Supreme Court of Pakistan dated 21-9-2009 and the judgment of this tribunal in Service appeal No. 1472/Neem/2008 decided 19-8-2010 under the titled "Junaid Bacha Versus EDO Health Nowshera and other"

(Copy of judgment is appended as Annex-A).

5. That the Appellate Authority was under statutory obligation to have honoured the order/judgment of this Hon'ble Tribunal in letter and spirit by deciding the departmental appeal within the statutory period of law. But he paid no heed to the said order.
6. That the defiant attitude/conduct of Appellate Authority clearly amounts to willful disobedience of the order/judgment of this Hon'ble Tribunal, therefore, requires to be dealt with iron hands under the relevant law.

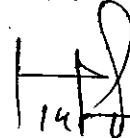
In view of the above narrated facts, it is, therefore, humbly prayed that appropriate proceedings may graciously be initiated against the Appellate Authority for disobedience of the order/judgment of this Hon'ble Tribunal and he may also be awarded exemplary punishment in accordance with law.

Any other relief deemed proper and just in the circumstances
of the case, may also be granted to the petitioner.



Petitioner

Through



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

&



Kamranullah

Advocate High Court, Peshawar

Dated: 31-3-2016

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. _____/2016

- 1. Asif Khan, Malaria Supervisor, office of the Executive District Officer (Health) Nowshera.

PETITIONER

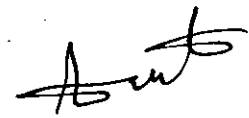
VERSUS

- 1. The Director General Health, Khyber Pakhtunkhwa Peshawar and others.

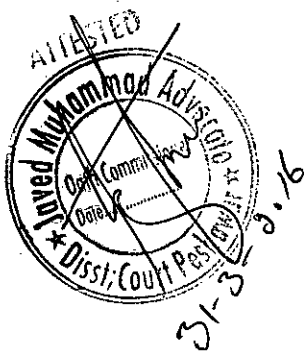
RESPONDENTS

AFFIDAVIT

I, Asif Khan, Malaria Supervisor, office of the Executive District Officer (Health) Nowshera., do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

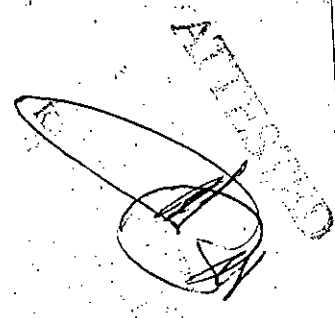


Deponent



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	01.10.2015	<p style="text-align: center;">3</p> <p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 820/2012</p> <p style="text-align: center;">Asif Khan Versus Executive District Officer (Health) Nowshera etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKSH SHAH, MEMBER.</u>- Counsel for the appellant (Mr. Yasir Saleem, Advocete) and Government Pleader (Mr. Ziaullah) for the respondents present.</p> <p>2. Appellants claims that he was appointed as Malaria Supervisor in the Health Department Nowshera, performed duty and also received salary for some time which salary was stopped lateron and in this respect his departmental appeal was also not responded, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. The learned counsel for the appellant submitted hat case of the appellant is identical with the case of Umar Hayat etc. mentioned in decision of this Tribunal dated 19.08.2010 decided under the title of "Junaid Bacha Versus EDO (Health) Nowshera etc.", in Service Appeal No. 1473/Neem/2008 as post of the appellant had been duly advertised and further that he also belong to district</p>

ATTORNEY



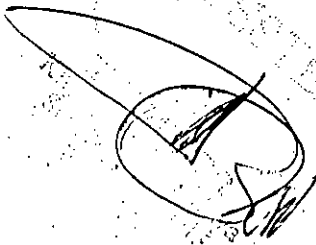
Nowshera, the criteria prescribed in the judgment dated 24.09.2009 of the august Supreme Court of Pakistan mentioned in para-4 of the judgment of this Tribunal stated above.

5. Contrarily the learned Government Pleader resisted the appeal by stating that case of the appellant is not similarly placed with the cases of Umar Hayat etc. for the reasons that no appointment letter was ever issued to the appellant and the appointment letter if any produced by the appellant is fake and fictitious. It was further submitted that appeals of the appellants are badly time-barred.

6. The appellant claimed that he was civil servant duly appointed by the competent authority, also received salary for some time which was stopped later. This claim of the appellant was denied by the respondent-department. Evidently a factual controversy comes up which can better be resolved by the department in the light of its record. Departmental appeal of the appellant was also not responded as stated before the Tribunal.

7. Since departmental appeal of the appellant was not responded by the department, therefore, the Tribunal deems it appropriate to refer the matter to the appellate authority to decide the same in the light of the following observations of this Tribunal:-

ATTESTED



- i. Whether appointment letter had been issued to the appellant by the competent authority; ✓
- ii. Whether the appellant was medically examined; performed duties and also received or not at all any salary; and ✓
- iii. Whether appellant is similarly placed person as Umar Hayat etc. mentioned in the judgment of the august Supreme Court of Pakistan dated 24.09.2009 and the judgment of this Tribunal in Service appeal No. 1473/Neem/2008 decided on 19.08.2010 under the titled "Junaid Bacha Versus EDO (Health Nowshera and others. (Copy of the judgment of august Supreme Court of Pakistan was not produced by the appellant before this Tribunal). ✓

8. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record.

9. This judgment will also dispose of 2 other connected appeals bearing No. 821/2012 Saqib and No. 822/2012 Adnan Ahmad involving common facts and question of law in the same manner.

ANNOUNCED
01.10.2015 ✓

Sd/- Mr. Bahadur Hussain
Member
Sd/- Mr. Latif
Member

(ABDI
ME

10
8
1300
7-10-2015
7-10-2015
7-10-2015

Certified true copy
[Signature]
[Signature]

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. 52 /2016

K.P. Province
Service Tribunal
Diary No. 24/4
Dated 31-3-16

1. Asif Khan, Malaria Supervisor, office of the Executive District Officer (Health) Nowshera.

PETITIONER

VERSUS

1. The Director General Health, Khyber Pakhtunkhwa Peshawar.
2. The Executive District Officer (Health), Nowshera .
3. The District Co-ordination Officer, Nowshera .
4. The District Accounts Officer, Nowshera.

RESPONDENTS

**APPLICATION UNDER SECTION
7 (2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 FOR
EXECUTION OF
ORDER/JUDGMENT DATED
1-10-2015 PASSED BY THIS
HON'BLE TRIBUNAL IN
SERVICE APPEAL NO. 820/2012.**

RESPECTFULLY SHEWITH,

Short facts giving rise to the present execution application are as under:-

1. That the petitioner was appointed as Malaria Supervisor (BPS-9) on 15-2-2008 after observing all legal and codal formalities. He was medically examined and thereafter he submitted his arrival report.

Execution Petition No. 52/2016
Asif Khan vs Health Deptt.

28.10.2016

Petitioner with counsel and Dr. Muhammad Shafiq, Medical Officer alongwith Addl. AG for respondents present. Representative of the respondent-department submitted implementation report. Since the judgment of this Tribunal has been implemented hence, the instant execution petition is hereby dismissed as satisfied. The petitioner may however, seeks any other remedy if allowed by law. File be consigned to the record room.

MM

VAKALATNAMA

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION No. _____ /2016

Asif Khan, Malana Supervisor.

APPELLANT / PETITIONER

VERSUS

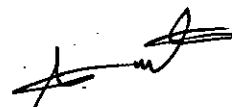
Director General Health, KPK and others.

RESPONDENTS

I Asif Khan, do hereby appoint Rizwanullah, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me as my 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 costs.

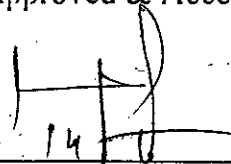
I authorize the said Advocate to deposit, withdraw and receive on my behalf all sums and amounts payable or deposited on my account in the above noted matter. The Advocate/Counsel is also at liberty to leave my case at any stage of the proceedings, if his any fee left unpaid or is outstanding against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

Dated: 28/3 /2016

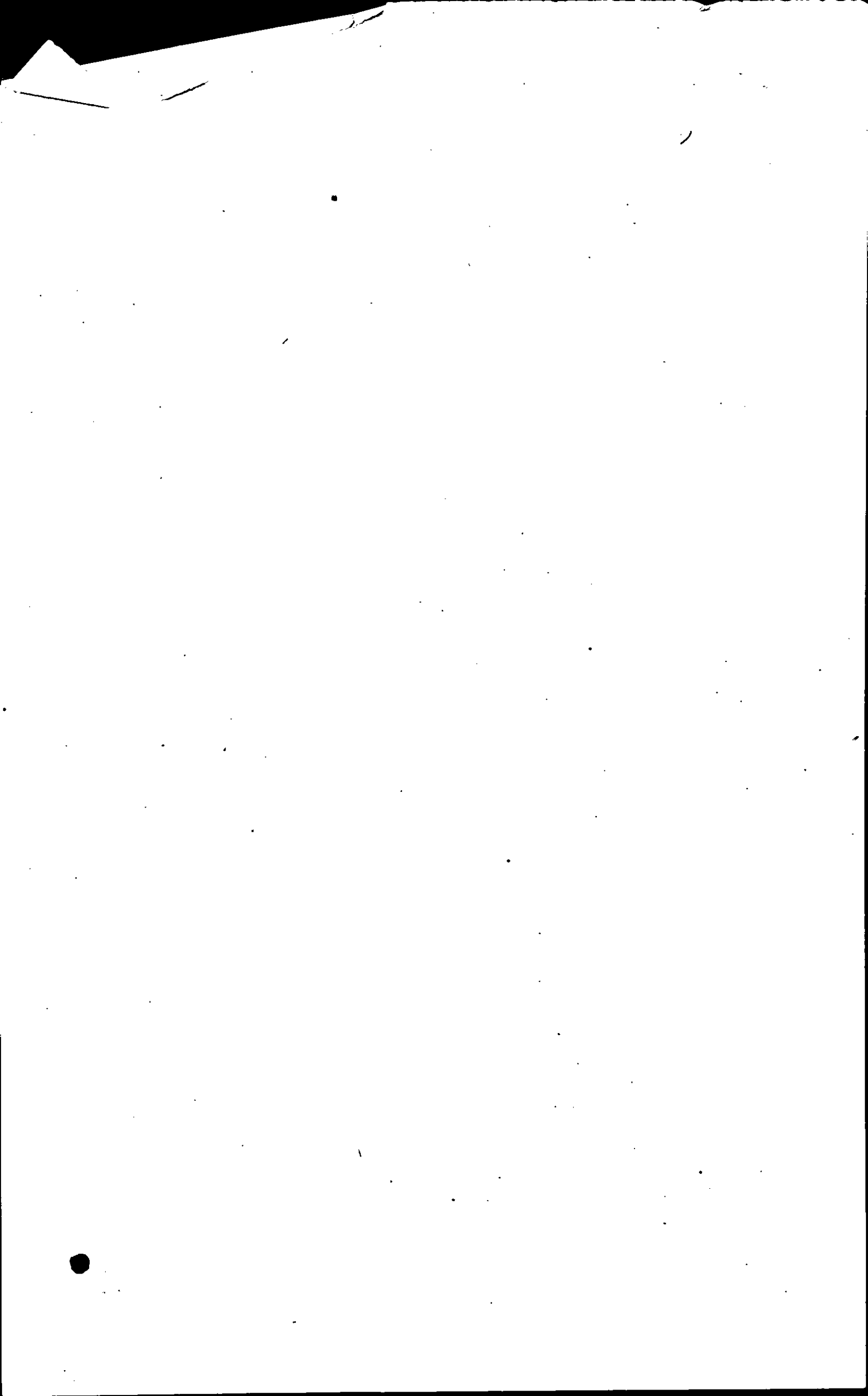


CLIENT

Approved & Accepted



MR. RIZWANULLAH
Advocate High Court





**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR**

OFFICE ORDER

The appellant Asif Khan file service appeal before Honorable Service Tribunal KPK which was decided vide judgment dated 01/10/2015 and the matter was referred to the undersigned (appellate authority) to decide the same.

In the light of observation mentioned in Para 07 of the judgment. The record was questioned fro the competent authority through his representative and after perusal of the record it is decided as under.

1. That the competent authority categorically denied the appointment of the appellant office record of the competent authority was checked and no appointment order of the appellant even a page or single word is found on concerned office file.
2. The medical certificate is also doubtful and suspicious as he was not referred by the DHO for medical to the MS DHQ. He is proceeded for medical fitness after a laps of 33 days. Though he is not a civil servant.
3. The case of the appellant is not similar that of Mr. umer hayat. The appointment order of Mr. umer hayat was issued by the competent authority and he is belong to District Nowshera where as the appellant is not domicile of Nowshera and appointment order of the appellant is fake and bogus further the diploma in pathology is required for the post which the appellant does not possess.

In the light of foregoing discussion appellate authority regret the departmental appeal of the appellant.

**DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.**