


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 693/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.09.2023	<p>The implementation petition of Mr. Sakhi Ullah submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>28-09-2023</u>. 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. 693/2023
In Service Appeal No.1434/2019

Sakhi Ullah

V/S

Health Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-02
	Copy of memo of appeal	A	03-07
2	Copy of judgment dated 31.05.2022	B	08-13
	Copy of application	C	14
3	Vakalat Nama	-----	15

PETITIONER

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 693 /2023
In Service Appeal No.1434/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7925

Dated 20/09/23

Mr. Sakhi Ullah Ex-Clinical Technician (Pharmacy),
R/O House No.804, Sector F-8, Phase 6, Hayatabad, Peshawar.

PETITIONER

VERSUS

1. The Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

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EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 31.05.2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.1434/2019 in this Honorable Tribunal against the order dated 20.09.2019, whereby the departmental appeal of eth petitioner has been rejected against the order dated 15.03.2010, wherein juniors top the petitioner has been promoted to the post of Clinical technologist (BPS-17), while the petitioner has been ignored in-spite of eligibility and seniority, for no good grounds with the prayer that the order dated 20.09.2019 may kindly be set aside and the order dated 15.03.2010 may also modified to the extent that petitioner may also be considered for promotion on notional/proforma basis to the post of clinical technologist (BPS-17) from that vary dater i.e 15.03.210.
(Copy of memo of appeal is attached as Annexure-A)
2. The appeal was heard and decided by this Honorable Tribunal on 31.05.2022. The Honorable Tribunal allowed the appeal of the

petitioner as prayed for. **(Copy of judgment dated 24.07.2023 is attached as Annexure-B)**

3. That the appeal of the petitioner was allowed by this Honorable Tribunal on 31.05.20122, but after the lapse of more than 01 year, the respondents did not implement the judgment dated 31.05.2022 of this Honorable Tribunal.
4. That the petitioner also filed application for implementation of judgment dated 31.05.2022 of this Honorable Tribunal, but no action has taken on his application. **(Copy of application is attached as Annexure-C)**
5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 31.05.2022 of this Honorable Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 31.05.2022 of this Honorable Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 31.05.2022 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.



PETITIONER

Sakhi Ullah

THROUGH:



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT

A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1434 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1481

Dated 22/10/2019

Mr. Sakhi Ullah Ex-Clinical Technician (Pharmacy),
R/O House No.804, Sector F-8, Phase 6, Hayatabad, Peshawar.

(APPELLANT)

VERSUS

1. The Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 20.09.2019, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 15.03.2010, WHEREIN JUNIORS TO THE APPELLANT HAS BEEN PROMOTED TO THE POST OF CLINICAL TECHNOLOGIST (BPS-17), WHILE THE APPELLANT HAS BEEN IGNORED INSPITE OF ELIGIBILITY AND SENIORITY, FOR NO GOOD GROUNDS.

Filed to-day
W. Saad
Registrar
22/10/19

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.09.2019 MAY KINDLY BE SET ASIDE AND THE ORDER DATED 15.03.2010 MAY ALSO MODIFIED TO THE EXTENT THAT APPELLANT MAY ALSO BE CONSIDERED FOR PROMOTION ON NOTIONAL/PROFORMA BASIS TO THE POST OF CLINICAL TECHNOLOGIST (BPS-17) FROM

Re-submitted to-day
and filed.

W. Saad
Registrar
29/10/19

ATTSTED

(4)

THAT VARY DATE I.E 15.03.2010. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant appointed in the Health Department as Dispenser/Technician (BPS-05) on the recommendation of Departmental Selection Committee in the year 1974 and has performed his duty with great devotion and honesty, whatsoever assigned to him and also have good service record throughout.
2. That the appellant was enlisted at S.No.411 of the seniority list of Dispenser circulated on 17.12.1981 by the department. **(Copy of seniority list is attached As Annexure-A)**
3. That during the course of service, some of the junior colleagues of the appellant were promoted to the post of Chief dispenser (BPS-16) vide notification dated 26.05.1992 and 11.08.1998 respectively. That feeling aggrieved the appellant time and again requested the department for grant of promotion to the post of Chief Dispenser (BPs-16), but the respondents one way or other way delayed the promotion of the appellant. **(Copies of notifications are attached as Annexure-B&C)**
4. That Vide Government of KP (then NWFP) Health Department Notification dated 25.08.2006, the competent authority approved 8 stages Paramedics Service Structure of Khyber Pakhtunkhwa in which the post of the appellant was re-designated in BPS-12 from BPs-11 with nomenclature of Clinical Technician vide order dated 31.05.2010. **(Copy of order dated 31.05.2010 is attached as Annexure-D)**
5. That the appellant feeling aggrieved filed departmental appeal for similar relief as meted out to other colleagues of the appellant, but the same was regretted on good grounds. The appellant then service appeal No.1696/2010 in this august Service Tribunal, the august Service Tribunal accepted the appeal of the appellant vide judgment dated 19.01.2012. **(Copies of departmental appeal, rejection order and judgment are attached as Annexure-E,F&G)**

ATTSTED

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6. That in the said process, the juniors colleagues of the appellant were further promoted to the post of Clinical Technologist (BPs-17) vide impugned notification dated 15.03.2010. The appellant retired from service on attaining the age of superannuation vide order dated 30.12.2010 during the course of litigation. **(Copies of 15.03.2010 and retirement order dated 30.12.2010 are attached as Annexure-H&I)**
 7. That on the basis of judgment of this august Service Tribunal, the appellant was promoted to the post of Chief Clinical Technician (Pharmacy) BPS-16 w.e.f 11.03.1998 vide order dated 12.12.2013. **(Copy of order dated 12.12.2013 is attached as Annexure-J)**
 8. that the appellant submitted application for further notional/proforma promotion to the post Chief Technologist BPS-17 w.e.from 15.03.2010, when his juniors were promoted and on his application working paper was prepared in which it was clearly mentioned that the appellant is senior to Qasim Jan, Mukhtiar Ahmad already promoted as Clinical Technologist Pharmacy BPS-17 and requested that convenient date may be fixed for DPC to consider the promotion of the appellant to the post of Clinical Technologist (Pharmacy) BPS-17 from retrospective date from where his erstwhile juniors were promoted viz: (w.e.f.15.03.2010.) and in this respect working paper along with the relevant documents regarding promotion of the appellant to the post of Clinical Technologist Pharmacy BPS-17 was also submitted which is evident from the letter dated 13.01.2015, however no action has been taken on that till date. **(Copies of working paper and letter dated 13.01.2015 is attached as Annexure-K&L)**
 9. That as the grievance of the appellant has not been redressed, therefore he filed departmental appeal which was not responded within the statutory period of ninety days and after the stipulated period, the appellant filed service appeal No.1050/2015 in this august Service Tribunal which was decide on 27.02.2018 in which the august Service Tribunal remitted the case of the appellant to the appellate authority with the direction to examine the case of the appellant and to decide his departmental appeal dated 26.05.2015 with speaking order within a period of 3 months. **(Copies of departmental appeal and judgment dated 27.02.2018 are attached as Annexure-M&N)**
 10. That as the appellate authority did not decide the departmental appeal of the appellant within the stipulated time given in the judgment dated 27.02.2018 of this august Service Tribunal, therefore the appellant

ATTSTED

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filed Execution Petition No. 349/2018 and during the execution petition the respondents provide the order dated 30.09.2019, wherein the departmental appeal of the appellant was rejected. **(Copy of order dated 30.09.2019 is attached as Annexure-O)**

11. That the appellant has no other remedy except to file the instant service appeal for redressal of his grievance in this august Service Tribunal on the following grounds amongst others.

GROUND:

- A) That the order dated 20.09.2019 and not promoting the appellant to the post of Clinical Technologist Pharmacy BPS-17 on notional/proforma basis with effect from 15.03.2010, where his erstwhile juniors were promoted, are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That in the working paper respondent No.3 clearly mentioned that the appellant is senior to that who were promoted on 15.03.2010 and was requested that convenient date may be fixed for DPC to consider the promotion of the appellant to the post of Clinical Technologist (Pharmacy) BPS-17 from retrospective date from where his erstwhile juniors were promoted viz: (w.e.f.15.03.2010), but despite that the appellant was not promoted to Clinical Technologist Pharmacy BPS-17 on notional/proforma basis with effect from 15.03.2010.
- C) That the appellant is eligible for promotion to the post of Clinical Technologist Pharmacy BPS-17 on notional/proforma basis with effect from 15.03.2010, but he was deprived from this legal right by arbitrary manner by the respondent department without giving any reason.
- D) That not granting proforma promotion to the appellant, the respondent violated section-9 of the Civil Servant Act read with Rule-7 of the appointment, promotion and transfer Rules 1989.
- E) That the 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 Pakistan.

ATTSTED

- F) That according to Article 38 sub Article e , the state is bound to reduce disparity in the income and earning of individuals, including persons of various classes of the service of Pakistan.
- G) That the appellant has been discriminated by the respondent department on the subject noted above and as such the respondent violated principle of natural justice.
- H) That the appellant seeks permission to advance others 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.

Sakhi Ullah

APPELLANT

Sakhi Ullah

THROUGH:

Taimur Ali Khan

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

Asad Mahmood
ASAD MAHMOOD
ADVOCATE HIGH COURT

Abdul Wahid
&
ABDUL WAHID
ADVOCATE

Shah Faisal
&
SHAH FAISAL
ADVOCATE
SFP

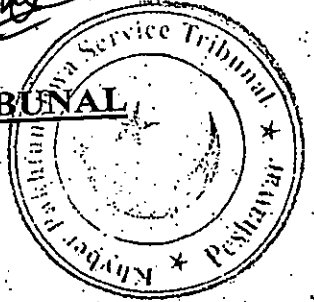
ATTSTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



APPEAL NO. 1434 /2019

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1481

Dated 22/10/2019

Mr. Sakhi Ullah Ex-Clinical Technician (Pharmacy),
R/O House No.804, Sector F-8, Phase 6, Hayatabad, Peshawar.

(APPELLANT)

VERSUS

1. The Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 20.09.2019, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 15.03.2010, WHEREIN JUNIORS TO THE APPELLANT HAS BEEN PROMOTED TO THE POST OF CLINICAL TECHNOLOGIST (BPS-17), WHILE THE APPELLANT HAS BEEN IGNORED INSPITE OF ELIGIBILITY AND SENIORITY, FOR NO GOOD GROUNDS.

Med-to-day
Registrar
22/10/19

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.09.2019 MAY KINDLY BE SET ASIDE AND THE ORDER DATED 15.03.2010 MAY ALSO MODIFIED TO THE EXTENT THAT APPELLANT MAY ALSO BE CONSIDERED FOR PROMOTION ON NOTIONAL/PROFORMA BASIS TO [BPS-17] FROM

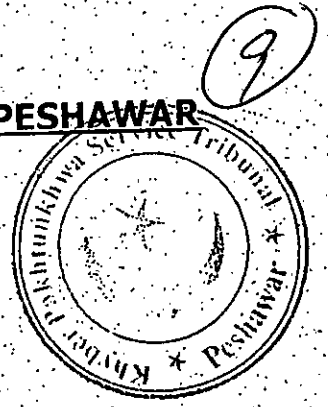
Submitted to -day
Registrar

ATTSTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1434/2019

Date of Institution 22.10.2019
Date of Decision 31.05.2022



Mr. Sakhi Ullah Ex-Clinical Technician (Pharmacy), R/O House
No.804, Sector F-8, Phase 6, Hayatabad, Peshawar.

(Appellant)

VERSUS

The Secretary Health, Khyber Pakhtunkhwa, Peshawar and two
others.

(Respondents)

Taimur Ali Khan,
Advocate

For appellant.

Kabir Ullah Khattak,
Additional Advocate General

For respondents.

Rozina Rehman
Fareeha Paul

Member (J)
Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

“On acceptance of this appeal the order dated
20.09.2019 may kindly be set aside and the order
dated 15.03.2010 may also be modified to the extent
that appellant may also be considered for promotion
on notional/proforma basis to the post of Clinical
Technologist (BPS-17) from that very date i.e.

ATTSTED

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2. Brief facts of the case are that appellant was appointed as Dispenser/Technician (BS-05) in the Health Department on the recommendation of Departmental Selection Committee in the year 1974. He was enlisted at Serial No.411 of the seniority list circulated on 17.12.1981. During the course of service, some of his junior colleagues were promoted to the post of Chief Dispenser (BS-16) vide Notification dated 26.05.1992 and 11.08.1998. Feeling aggrieved, he requested the Department for grant of promotion but to no avail. He then filed proper departmental appeal but the same was regretted. He, therefore, filed Service Appeal No.1696/2010 which was accepted vide judgment dated 19.01.2012. In the said process, his junior colleagues were further promoted to the post of Clinical Technologist (BS-17) vide notification dated 15.03.2010. The appellant retired from service on attaining the age of superannuation on 30.12.2010. He then submitted application for notional promotion from the date when his juniors were promoted but to no avail. He, therefore, filed proper departmental appeal which was not responded to, hence, he filed Service appeal No.1050/2015 and vide judgment of this Tribunal, case of the appellant was remitted to the appellate authority with direction to examine the case of the appellant and to decide his departmental appeal with speaking order which was again rejected, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

ACCEPTED

(11)

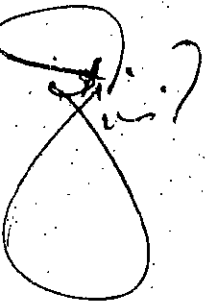
4. Taimur Ali Khan Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the order dated 30.09.2019 by not promoting the appellant to the post of Clinical Technologist pharmacy on notional basis is against law, facts and norms of justice, therefore, not tenable and liable to be set aside. He contended that it has been clearly mentioned in the working paper that appellant was senior to his colleagues who were promoted on 15.03.2010 and it was requested that convenient date may be fixed for DPC to consider the promotion of appellant from the date when his juniors were promoted but despite that, he was not promoted. He contended that the appellant was not treated by the authority in accordance with law and rules and as such the respondents violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, it was submitted that the appellant was discriminated by the Department and as such respondents violated the principles of natural justice.

5. Conversely, learned AAG submitted that the appellant was promoted to the post of Chief Clinical Technician (BS-16) w.e.f 11.08.1998 and that working paper for promotion to the post of Clinical Technologist (Pharmacy) BS-17 was submitted to the government but the competent authority regretted the case being time barred.

6. After hearing the learned counsel for parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant joined the Health Department in the year 1974. It is not disputed that

APPROVED

was discriminated. His repeated requests and departmental appeal were not considered therefore, he filed service appeal which was accepted vide judgment dated 19.01.2012. The respondents were directed to consider the appellant for promotion to BS-14 and 16 during the relevant times. Consequent upon approval accorded by the competent authority vide minutes of the meeting of the Departmental Promotion Committee held on 02.09.2013 appellant was promoted to the post of Chief Clinical Technician (Pharmacy) BS-16 w.e.f 11.03.1998. There is no dispute in respect of seniority of the appellant and his promotion to BS-16 from the date when his juniors were promoted. Government of Khyber Pakhtunkhwa Peshawar, Law Department decided not to file appeal before the Supreme Court of Pakistan against the judgment of this Tribunal vide which appellant was promoted to BS-16 from the date when his juniors were promoted. During the pendency of appeal filed by the appellant for promotion to BS-16, juniors to appellant were promoted to the post of Clinical Technologist (BS-17), therefore, after getting favorable decision from this Tribunal, again he knocked at the door of the Department for further promotion to BS-17 from retrospective date when his juniors were promoted but his appeal was not replied, therefore, he filed another service appeal and his case was remitted to the appellate authority with direction to decide the departmental appeal with speaking order and it was on 30th September, 2019 when his appeal was regretted being time barred, hence, the present service appeal. It is not disputed rather admitted that working paper



wherein, it was requested that a convenient date may be fixed for the Departmental Promotion Committee to consider the promotion case of the appellant from the retrospective date from where his erstwhile juniors were promoted viz: (w.e.f 15.03.2010). It has been clearly mentioned that appellant was senior to Qasim Jan and Mukhtar Ahmad who were promoted to BS-17. We find that it has not been disputed before this Tribunal that the matter was delayed without any justifiable reason and in the meanwhile appellant attained the age of superannuation. He cannot be made to suffer on account of the departmental lapse.

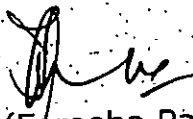
7. In this view of the matter, this appeal is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
31.05.2022

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(Rozina Rehman)
Member (J)


(Fareeha Paul)
Member (E)

Date of Presentation of Application 16/6/22
 Number of Words 2400
 Copy Fee 26/-
 Urgent 31/-
 Total 36/-
 Date of Submission of Copy 16/6/22
 Date of Delivery of Copy 16/6/22

ATTSTED

خدمتِ مہمان سیکرٹری ہیلتھ سہاگہ صوبہ گلگت بلتستان

Date: 1078 - اس عمر میں مددگی
Date: 3.10.22

Health Department / سہاگہ
گزارش کے لیے صوبہ سروس سہاگہ صوبہ گلگت بلتستان

میرے حق میں - اسل منظر آئی ہے اور مجھے 17 BBS کو

Prorath کیا ہے - منسلک 31، 2022 کو ہوا ہے۔

اس منسلک میں مجھے ہر قسم کی سہاگہ کا فائدہ ہے۔

اس وقت تک مجھے کوئی حلوہات نہیں دیا گیا ہے

اس عمر میں مددگی سہاگہ میں کیا رہے۔

سہاگہ صوبہ سروس میں - یا واپس دے لو گے

رہیں گے - منسلک کی کاپی منسلک ہے۔

الغرض اس حوالہ 3-x-2022

سختی اللہ خان ولد حاجی محمد سید ٹیوس 831

شریک غیر 13 قبیلہ کا ساتھ آباد سہاگہ

uptdt
send to DGHS Sakhiullah
to look into the same
and furnish views/comments
at the earliest, Ms. / 03/10/2022

ATTSTED

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VAKALAT NAMA

NO. _____/2023

IN THE COURT OF KP Service Tribunal, Peshawar

Sakhi Ullah

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Health Department

(Respondent)
(Defendant)

I/We, Sakhi Ullah

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2023

Sakhi Ullah

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court

BC-10-4240
CNIC: 17101-7395544-5
Cell No. 03339390916