

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

**Service Appeal No. 728/2023**

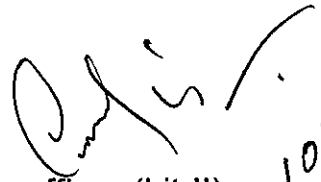
Dr. Muhammad Javed ..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa and others.....Respondents

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Section officer (Lit-II)  
Govt: of Khyber Pakhtunkhwa  
Health Department  
Section Officer (Lit-II)  
Health Department  
Khyber Pakhtunkhwa

10/10/23

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL NO. 728 OF 2023**

Dr. Muhammad Javed .....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa and others.....Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**Respectfully Sheweth:**

**Preliminary Objections:-**

8675  
27-10-2023

1. That the appellant has got no cause of action or locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
10. That the appellant is estopped by his own conduct to file the instant appeal.
11. That the instant appeal has been filed in violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 as no final order (Original or appellate) has been challenged in the instant appeal hence, the instant appeal is not maintainable on this score alone reliance is placed on 2006 SCMR 1630.

**ON FACTS:**

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Pertains to record.
6. Incorrect. In fact the appellant was surrender to the Health Department vide letter dated 05.07.2011 by the respondent No. 03 for initiation of disciplinary proceedings against him. (Copy of the letter dated 05.07.2011 is Annexure-A)
7. Incorrect. There was no such a bad law and order situation which made the appellant unable to continue his services or at least inform the department in fact the appellant concealed the fact that he proceeded abroad without any NOC from the competent authority. The appellant during the period got his MRCP (Member of Royal College of Physician) from Royal College of physician of Ireland in the year 2013, Specialty Certificate Examination in Gastroenterology from Royal College of physician

United Kingdom in 2014 and King Saud Advanced Hepatology Fellowship King Saud University Saudi Arabia in 2015 however; he concealed these material facts which came to surface when he submitted another extra ordinary leave without pay application on 22.03.2018 (**Annexure-B**) thereafter when he came back to Pakistan he submitted the application. The competent authority took a lenient view by treating his absence period w.e.f 09.04.2011 to 16.05.2016 as Extra ordinary leave (Without pay) under Rule 2.11 of the Khyber Pakhtunkhwa Civil Servant Pension Rules and posted him at Gajju Khan Medical College vide Notification dated 13.06.2017 (**Annexure-C**). It is worth mentioning that the doctor concerned has already submitted Service Appeal No. 223/2017 with the same contention however, the same was dismissed in default vide order dated: 20/08/2019 it is also important to note that the appellant has not challenged Notification dated 13.06.2017 in his previous or instant Service Appeal therefore, at this belated stage he could not claim for the benefit of the period regularized by the competent authority vide Notification dated 13.06.2017.

8. Detail reply has been given in para 07 above however, it is evident from the letter dated 26.07.2016 that the service of the appellant was surrender by the respondent No. 03 due to the habit of taking leave without any plausible reason.
9. Already replied in para 07 above.
10. Incorrect. In fact the appellant submitted an application dated 22.03.2018 (Already Annexed as Annexure-B) for extra ordinary leave without pay for liver transplant training and the competent authority vide Notification dated 11.05.2018 (**Annexure-D**) accorded grant of 365 days of EOL without pay in respect of the appellant which was subsequently extended on his application dated 01.04.2019 (**Annexure-E**) vide Notification dated 09.07.2019 (**Annexure-F**).
11. Incorrect. The doctor concerned himself applied for leave without pay for one year vide application dated 06.12.2021 (**Annexure-G**) which was allowed vide Notification dated 11.02.2022 (**Annexure-H**). It is worth to mention that the appellant availed leave (EOL) without pay since 2010 to 2022 on various occasion on his own request.
12. Correct to the extent of submission of departmental representation filed by the appellant for regularization of EOL without pay into leave with half pay plus benefits and up-gradation basic pay scale however, the instant appeal is totally different from the so called departmental appeal as up-gradation was prayed in the departmental appeal along with other benefits however, in the instant appeal the appellant seeking promotion / enlistment into the seniority list as well as treating the leave without pay period into half pay. It is worth to mention that the appellant on his own request were granted EOL without pay through various Notifications however, none of the Notification has been challenged in the departmental appeal as well as in the instant appeal therefore the instant appeal being in violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 is not maintainable.
13. The appellant is not an aggrieved person. However reply on the grounds is as under:

#### ON GROUNDS:

- A. Incorrect. The replying respondents have acted as per law, Rules and principle of natural justice. It is worth to mention that the replying respondents have treated the leave period of the appellant on his own request as replied in the preceding paras so far as promotion is concerned the same does not take place automatically but it requires some process and other requirements under the Rules and policy. The appellant did not mention in his appeal that whether he is eligible for promotion or otherwise or has submitted his PERs dossiers or not.
- B. Incorrect. Already replied in the preceding paras.
- C. Incorrect, Already replied in para "A" above.
- D. Incorrect. Granting or refusing leave on full pay/ half pay or without pay is the prerogative of the competent authority however, in the instant case the appellant

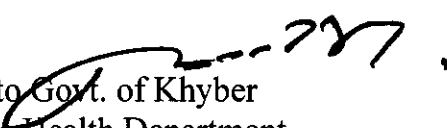
failed to challenge the Notifications under which his absence/ leave period had been treated as EOL on his own request therefore, the instant appeal is not maintainable on this score alone and the appellant is not entitled for taking benefits of the earned leave.

E. Already replied in para "A" above.

F. Answering respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of arguments.

**PRAYER:**

It is therefore humbly prayed that on acceptance of the Parawise comments, the instant appeal of the appellant may very graciously be dismissed with costs.

  
Secretary to Govt. of Khyber  
Pakhtunkhwa Health Department  
**Respondent No. 01&02**

1

**BEFORE THE SERVICE TRIBUNAL KPK**  
**PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No 893 /2017

Diary No. 227

Dated 6-3-2017

Dr Muhammad Javed, Senior Registrar, Khyber Girls Medical College  
Peshawar.....Appellant.

**V E R S U S**

1. Govt. of Khyber Pakhtun Khwa through Chief Secretary Peshawar.
2. Secretary, Health Department, Govt. of KPK Peshawar.
- 3 *Dean/principal K GMC Peshawar.*.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974**  
**FOR THE ADJUSTMENT/POSTING OF THE APPELLANT**  
**AGAINST HIS POST AND RELEASE OF SALARIES OF THE**  
**APPELLANT FOR WHICH THE DEPARTMENTAL APPEAL**  
**OF THE APPELLANT HAS NOT BEEN RESPONDED SO**  
**FAR DESPITE THE LAPSE OF STATUTORY PERIOD OF**  
**NINETY DAYS.**

**PRAYER:-**

On acceptance of this appeal the respondents may kindly be directed to adjust/post the appellant against his post and release his salaries w.e.f. 08-04-2011 and onwards.

**Respectfully Submitted:-**

1. That the appellant was appointed as Medical officer on contract basis on 29-11-1995, and was appointed as Medical office on regular basis in the year 1997, and was appointed as Senior Registrar (BPS-18) through Public Service Commission KP on 30-06-2009 and was posted at Khyber Girls Medical College Peshawar and since then he performed his duties with honesty and full devotion and to the entire satisfaction of the superior officers.

That during his posting as Senior Registrar, the appellant fell ill and made request for Medical leave of 365 days and accordingly he was granted Medical leave for 180 days (with

*Ex parte  
14/12/18*

*vide order  
sheet dated  
04-7-2018*

*Filed to-day  
Registrar  
6/3/2017*

**ATTESTED**

*[Signature]*

*[Signature]*

27.06.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General alongwith Mr. Hazrat Shah Superintendent, for the respondents present. Learned Assistant Advocate General produced a copy of notification dated 28.05.2017, whereby Ex-post facto Sanction for grant of extra ordinary leave to the petitioner w.e.f. 09.04.2011 to 16.05.2016 was granted and the same is placed on record. Adjourned. Adjourned. Case to come up for arguments on 20.08.2019 before D.B.

(Hussain Shah)  
Member

(M. Ahmad Hassan)  
Member

*Attended  
Confidential*

20.08.2019

None present for appellant. Mr. Riaz Ahmad Paindakhail, Assistant AG for the respondents present. The court time is about to over but non-appeared on behalf of the appellant nor the appellant was present in person, therefore, the instant service appeal is hereby dismissed in default. File be consigned to the record room.

ANNOUNCED

20.08.2019

(Hussain Shah)  
Member

(M. Amin Khan Kundi)  
Member

*Certified true copy*  
**CLERK**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application	26/9/23
Number of Words	10-p
Copying Fee	50/-
Urgent	55/-
Total	105/-
Name of Copy	
Date of Copy	26/9/23
Date of Delivery	26/9/23

CHIEF E  
Hayatabad A  
Peshawar, K.P.  
PAKISTAN



Tel: Off: 92 (0) 91-9217188  
Fax: No: 92 (0) 91-9217189  
Tel: Exch: 092-91-9217140-47  
www.hmcpeshawar.com.pk  
Ref: 10435/HMC  
Dated: 5/7/2011

120

A

The Secretary to Govt. of Khyber Pukhtunkhwa,  
Health Deptt, Peshawar.

Copy No. 18899  
9.7  
Department

Subject: DECISION OF 32<sup>ND</sup> MEETING OF M.C.

It is stated that the Management Council in its 32<sup>nd</sup> meeting held on 07.06.2011 (minutes of the meeting are enclosed for ready reference).

The M.C decided that Dr. Saeed-ur-Rehman, Associate Professor, Pathology, KGMC should be surrendered to Health department and the post should be filled on contract basis.

Regarding Dr. Muhammad. Javed. S.R. Medicine, KGMC, the M.C decided that he may also be surrendered to the health department and disciplinary action should be initiated against him.

The case has been initiated by Principal, Khyber Girls Medical College, Peshawar which is forwarded for further necessary action (letter of Principal name enclosed).

*[Signature]*  
MEDICAL SUPERINTENDENT/  
SECRETARY  
MANAGEMENT COUNCIL  
HAYATABAD MEDICAL COMPLEX  
PESHAWAR

*Attested*  
*[Signature]*

No. \_\_\_\_\_ /HMC, dated / /2011

Copy to:

- 1. Chief Executive, HMC
- 2. Principal, KGMC, Peshawar.

MEDICAL SUPERINTENDENT/  
SECRETARY  
MANAGEMENT COUNCIL  
HAYATABAD MEDICAL COMPLEX  
PESHAWAR

*1053*  
*S.P.K.*  
*11/07/11*  
*sent*  
*sent up*  
*is disciplinary proceedings*  
*proposed against or joined?*  
*DS-1*  
*SO-I*

*19/07/11*  
*J 19/7*

March 22, 2018

To,  
The Secretary Health  
Government of KPK  
Peshawar Pakistan

Subject: Extra Ordinary Leave without Pay for Liver Transplant Training

Dear Sir,

I am applying for a period of three years Extra Ordinary Leave Without Pay to undertake hands on training as Consultant Hepatologist at Hepatology & Liver Transplant Department at Quaid-e-Azam International Hospitals, Islamabad.

This opportunity to get hands on training as Transplant Hepatologist is a rare distinction that would enable me to prepare myself for a role in the already planned Liver Transplant Program under the Khyber Medical University and Health Department in KPK.

I would be grateful for your kind appreciation of this opportunity and your attention and approval of this leave.

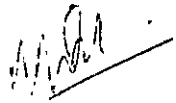
I am currently working as Senior Registrar at Bacha Khan Medical Complex and Gajju Khan Medical College Swabi.

Please acknowledge that I already hold the following qualifications.

1. MBBS 1992 from Khyber Medical College Peshawar Pakistan
2. FCPS (Medicine) 2003 from College of Physicians and Surgeons of Pakistan
3. FCPS (Gastroenterology) 2011 from College of Physicians and Surgeons of Pakistan
4. MRCP from Royal College of Physicians of Ireland 2013
5. Specialty Certificate Examination in Gastroenterology from Royal College of Physicians, UK 2014
6. King Saud Advanced Hepatology Fellowship King Saud University, Saudi Arabia 2015

I have done post graduate Hepatology Fellowship as above and this new experience is going to help in improve my credentials to work as Transplant Hepatologist under the Health Department in future.

Best wishes

  
Dr. Muhammad Javed  
Senior Registrar  
Department of Medicine  
Gajju Khan Medical College, Swabi

Please put up.

2-1 Zedr  
11/04

282  
B  
26  
47  
578  
Attested.  
Punjab





HEALTH DEPARTMENT

DATED PESH: THE 13<sup>TH</sup> JUNE 2017

322

NOTIFICATION

No.SOH-I/HD/1-538/09

In terms of Rule 2.11 of the Khyber Pakhtunkhwa Civil.Servants Pension Rules the period of absence w.e.f 9/4/2011 to 16/5/2016 in respect of Dr. Muhammad Javed, Senior Registrar Medicine (BS-18), Khyber Girls Medical College, Peshawar is hereby commuted retrospectively into Extra Ordinary leave (without pay).

2. Consequently, Dr. Muhammad Javed, Senior Registrar Medicine (BS-18) is hereby posted at Gajju Khan Medical College, Swabi for adjustment against any vacant post in equivalent scale with immediate effect.

SECRETARY HEALTH

*Attested*

Endst No and date even

C.C

1. Medical Director HMC, Peshawar.
2. Dean Khyber Girls Medical College, Peshawar.
3. Principal Gajju Khan Medical College, Swabi.
4. Registrar Services Tribunal, Peshawar.
5. Section Officer (Lit-II) Health Department w/r to Service Appeal No.223/2017.
6. Dist: Accounts Officer, Swabi.
7. PS to Secretary Health Department.
8. Doctor concerned.
9. Personal file of the doctor concerned.

Secretary Health Department  
Khyber Pakhtunkhwa

*Taslem Khan*  
(Taslem Khan)  
Section Officer-I



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

DATED PESH: THE 11<sup>TH</sup> MAY 2018

NOTIFICATION

No.SOH-I/HD/1-538/09 Sanction is hereby accorded to the grant of Three hundred and sixty five (365) days extra ordinary leave (without pay) with effect from the date of availing (should effect within 15 days after issuance of the order) in favour of Dr. Muhammad Javed, Senior Registrar, Medicine (BS-18), Gajju Khan Medical College, Swabi.

2. Certified that on expiry of leave the officer concerned will resume duty against his original post.

SECRETARY HEALTH

Endst.No.and date even

1. C.C  
Chief Executive/Principal Gajju Khan Medical College and Bacha Khan Medical Complex, Swabi.
2. Medical Supdt; Bacha Khan Medical Complex, Swabi.
3. Distt: Accounts Officer, Swabi.
4. Doctor concerned.
5. Personal file of the doctor concerned.

Section Officer-I  
Health Department  
Khyber Pakhtunkhwa

o/c - (Tasleem Khan)  
Section Officer-I

284  
D  
Attested  
Confidential

April 1<sup>st</sup>, 2019

294

To,  
The Secretary Health  
Government of KPK  
Peshawar Pakistan

E.

Subject: Extension of Extra Ordinary Leave without pay for Liver Transplant Training

Dear Sir,

I am applying for a period of Two years Extension of Extra Ordinary Leave without pay to continue hands on training as Consultant Hepatologist at Hepatology & Liver Transplant Department at Quaid-e-Azam International Hospital, Islamabad. My one year leave without pay will be completed on 15<sup>th</sup> May, 2019. Reference Notification No. SOH-1/HD/1-538/09 dated 11<sup>th</sup> May, 2018

This opportunity to get hands on training as Transplant Hepatologist is a rare distinction that would enable me to prepare myself for a role in the already planned Liver Transplant Program under the Khyber Medical University and Health Department in KPK.

I would be grateful for your kind appreciation of this opportunity and your attention and approval of this leave.

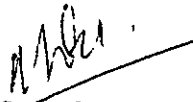
I am currently working as Senior Registrar at Bacha Khan Medical Complex and Gajju Khan Medical College Swabi.

Please acknowledge that I already hold the following qualifications.

1. MBBS in 1992 from Khyber Medical College Peshawar Pakistan.
2. FCPS (Medicine) in 2003 from College of Physicians and Surgeons of Pakistan.
3. FCPS (Gastroenterology) in 2011 from College of Physician and Surgeons of Pakistan.
4. MRCP in 2013 from Royal college of Physicians of Ireland.
5. Specialty certificate Examination in Gastroenterology from Royal college of Physicians, UK 2014.
6. King Saud Advanced Hepatology Fellowship King Saud University, Saudi Arabia 2015.

I have done post graduate Hepatology Fellowship as above and this new experience is going to help in improve my credentials to works as Transplant Hepatologist under the Health Department in future.

Best wishes.

  
**Dr. Muhammad Javed**  
Senior Registrar  
Department of Medicine  
Gajju Khan Medical College, Sawabi

Attended

Compi

Secretary Health  
Health Department  
Peshawar

31/07/20



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

DATED PESH: THE 9<sup>TH</sup> JULY 2019

NOTIFICATION

No. SOH-I/HD/1-538/09 Sanction is hereby accorded to the extension in Extra Ordinary Leave granted vide this department notification of even No dated 11<sup>th</sup> May 2018 for further period of seven hundred and twenty (720) days in favour of Dr. Muhammad Javed, Senior Registrar Medicine (BS-18), Gajju Khan Medical College, Swabi for completion of undergoing training as Consultant Liver Transplant Hepetologist at Quaid-e-Azam International Hospital Islamabad.

2. Certified that on expiry of leave, the officer concerned will resume duty against his original post.

SECRETARY HEALTH

Endst No and date even

- C.C to:-
- 1 Chief Executive/Principal Gajju Khan Medical College, Swabi.
  - 2 Medical Supdt; Bacha Khan Medical Complex, Swabi.
  - 3 Distt: Accounts Officer, Swabi.
  - 4 PS to Secretary Health Department.
  - 5 Doctor concerned.
  - 6 Personal file of the official concerned.

(Wasleem Khan)  
Section Officer-I

Section Officer (I-11)  
Health Department  
Khyber Pakhtunkhwa

98  
F  
22  
A. H. S. Tal

Q. J. S.

UB17D

December 06, 2021

G

20

Chief Executive  
Gajju Khan Medical College  
Bacna Khan Medical Complex, Swabi

Subject: LEAVE WITHOUT PAY, 365 DAYS

I am working as Consultant Gastroenterologist/Senior Registrar Medicine in Gajju Khan Medical College Swabi.

I have an offer from Pilgrim Hospital Lincolnshire NHS Trust UK to work as a Consultant Gastroenterologist.

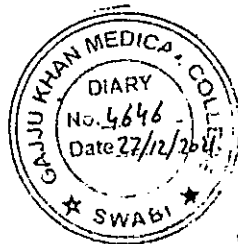
This is a tertiary care Hospital with a state of the art diagnostic and therapeutic gastrointestinal facilities. In particular ERCP and Endoscopic Ultrasound are at an advanced level.

Indeed, it is a good opportunity for me to improve my skills further and learn the advanced skills at the same time and to utilize for the benefit of our hospital patients on returning back.

I would be grateful for your kind appreciation of this opportunity and your attention and approval of this leave.

*Muhammad Javed*

Sincerely Yours  
Dr Muhammad Javed  
Senior Registrar  
Department of Medicine  
Gajju Khan Medical College, Swabi



*HRM for info*

*[Signature]*  
27/12/21

*Attestation*  
*[Signature]*

Section Officer  
Health Dept

*The date of availing under  
the revised Leave Rules, 1987*

*[Signature]*  
DISTRICT ACCOUNTS OFFICER  
SWABI

3/12/21



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar, the 11<sup>th</sup> February, 2022

**NOTIFICATION**

**NO. SOH-I/HD/1-538/2009/DR. MUHAMMAD JAVED:** Sanction is hereby accorded to the grant of 365-days (Three hundred and sixty five days) Ex-Pakistan Leave (leave without pay) in respect of Dr. Muhammad Javed, Senior Registrar, (BS-18) attached to Gajju Khan Medical College/ Bacha Khan Medical Complex, Swabi from the date of availing (but not more than fifteen (15) days from the issuance of this notification).

2- On expiry of the said leave the officer shall report to Director General Health Services, Khyber Pakhtunkhwa.

3. Health Department Khyber Pakhtunkhwa has no objection on proceeding abroad of the doctor concerned during the leave period

SD/-

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

**ENDST NO AND DATE EVEN**

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Director General Health Services, Khyber Pakhtunkhwa.
3. Dean/CEO GKMC/BKMC Swabi w/r to his letter F.No.2-7 Health Department/MTI/GKMC/BKMC/Swabi 25884-89 dated 29.12.2021.
4. District Account Officer, Swabi.
5. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
6. PS to Special Secretary (E&A), Health Department, Peshawar.
7. Doctor Concerned.
8. Master file.

SECTION OFFICER (E-I)

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

**Service Appeal No. 728/2023**

Dr. Muhammad Javed .....(Appellant)

Versus

Government of Khyber Pakhtunkhwa and others .....Respondents

**AFFIDAVIT**

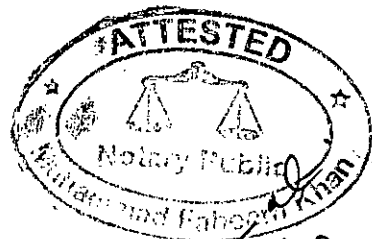
I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No. 728/2023 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal the answering respondent have neither been placed ex-party nor their defense have been struck-off or any cost imposed.

*(Handwritten Signature)*

Section officer (Lit-II)  
Govt: of Khyber Pakhtunkhwa  
Health Department

Section Officer (Lit-II)  
Health Department  
Khyber Pakhtunkhwa

10/10/23



M  
27/10/2023



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

**AUTHORITY LITTEr**

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

*Attested*

*(MAHMOOD ASLAM)*

Secretary to Govt. of Khyber Pakhtunkhwa  
Health Department  
Secretary  
Khyber Pakhtunkhwa  
Health Department

*9/15/23*

*10/10/23*

Section Officer (Lit-II)  
Health Department  
Khyber Pakhtunkhwa