Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 794/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.10.2023	The implementation petition of Dr. Rahim Ullah submitted today by Mr. Zartaj Anwar Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha peshi is given to the counsel for the petitioner. By the order of Chairman REGISTRAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: _____

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly pagec?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondent?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: ZARTAJ ANWAR

Signature: _____

Dated: _____

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of Execution Petition no. 794/2023
Appeal No.442/2022
Decided on 13.06.2023

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir

.....**(Appellant)**

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

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S. NO	*Description of documents*	*Annexure*	*Page No*
1	Memo of Appeal along with affidavit		1- 3
2	Copy of the appeal and order and judgment dated 13.06.2023	A & B	4 - 12
3	Copy of the application	C	13
4	~~Other documents~~		
5	Vakalatnama		

Appellant

Through

ZARTAJ ANWAR
Advocate Supreme Court of Pakistan
Office FR , 3 Forth Floor Bilour Plaza Peshawar Cantt.
Cell: 0331-9399185

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 794/2023

In the matter of
Appeal No.442/2022
Decided on 13.06.2023

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.

2. Govt of Khyber Pakhtunkhwa through Secretary, Agriculture, Livestock and Cooperative Department Peshawar.

3. Director General,(Extension) Livestock & Dairy Development Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Application for the implementation of the order and Judgment dated 13.06.2023 in the above noted service appeal of this Honourable Tribunal.

Respectfully Submitted:

1. That the above service appeal was pending before this honourable Tribunal which was decided vide order and judgment dated 13.06.2023.

2. That vide order and judgment dated 13.06.2023of this honourable Tribunal allowed the appeal on the following terms:

In view of the forgoing, the appeal in hand is allowed and the respondents are directed to promote te appellant from the date when his other colleagues was promoted based on the recommendation of PSB meeting dated 13.06.2020, in which name of the appellant was included as Sr No 2 of the panel of officers for

consideration and allow him all the pensionery benefits under the law ".

(Copy of the appeal and order and judgment dated 13.06.2023 is attached as annexure A & B *)*

3. That the judgment and order of this honourable tribunal was duly communicated to the respondent by the applicant by submitting the application for implementation of the judgment but they are reluctant to implement the same.(***Copy of the application is attached as annexure C)***

4. That the respondents are legally bound to implement the order and judgment dated 13.06.2023 of this honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, humbly prayed that **on acceptance of this application the order and judgment dated 13.06.2023 of this honorable tribunal be implemented in its true letter and spirit.**

Appellant

Through

ZARTAJ ANWAR
Advocate Supreme Court
Of Pakistan

&

IMRAN KHAN
Advocate High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No.442/2022
Decided on 13.06.2023

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir

.....**(Appellant)**

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

AFFIDAVIT

I, Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir, do hereby solemnly affirm and declare on oath that the contents of the above noted application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

ATTESTED
Gul Daraz Khan
Oath Commissioner
Advocate High Court Peshawar

Deponent
15302-6302940-3

4 ANNEX "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 442 /2022

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary, Agriculture, Livestock and Cooperative Department Peshawar.
3. Director General,(Extension) Livestock & Dairy Development Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the acts and omission of the respondents by not allowing Proforma promotion to the appellant, against which the appellant filed his departmental appeal on 22.11.2021 which is not yet responded even after the laps of statutory period of 90 days.

Prayer in Writ Petition:

On acceptance of this appeal the appellant may kindly be considered for pro-forma promotion to BPS-20, the appellant may also be awarded all the arrears and back benefits as from dated when his colleague was promoted i.e. 08.07.2020, the inaction of the respondents by not allowing Pro-forma Promotion to the appellant to the post of BPS-20 is illegal, unlawful and without lawful authority, or any other remedy which this Hon;able Tribunal deem proper may also be allowed.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Submitted:

1. That the appellant was performing his duties on the post of Executive District Director BPS-19 in the respondents department.

2. That the appellant performed his duty with great zeal and devotion without any complaint whatsoever regarding his performance.

3. That while serving in the said capacity, 2 post became vacant, 1 post of BPS-20 was vacated due to the retirement of Dr. Sher Muhammad Ex-Director General (Ext) L&DD Khyber Pakhtunkhwa Peshawar on 02.11.2019 and other post became vacant due to the sudden death of Dr. Syed Jehangir Shah. Ex Principal AHITI, Khyber Pakhtunkhwa Peshawar.

4. That the working paper of the 2 senior most officer BPS-19 was sent for their promotion to BPS-20 to the Provincial Selection Board, one Dr Malik Ayaz Wazir who was stood 1st in the seniority list and the other one was the appellant.***(Copy of the working papers is attached as annexure A).***

5. That upon which one namely Dr Malik Ayaz Wazir was promoted to BPS-20, vide office order dated 08.07.2020, but the present appellant was malafidely deprived from his due right of promotion to BPS-20 despite of the availability of post.***(Copy of the order dated 08.07.2020 is attached as annexure B).***

6. That being aggrieved from the acts and omission of the respondents by not promoting the petitioner to BPS-20 submitted several application but in vain and the appellant was retired in BPS-19 vide notification dated 28.07.2020 w.e.f 11.07.2020.***(Copy of the notification dated 28.07.2020 is attached as annexure C).***

7. That that the appellant submitted his departmental appeal/representation to the respondents department for his Pro-forma promotion to BPS-20 on 22.11.2021, which not yet responded even after the laps of statutory period of 90 days.***(Copy of the departmental appeal is attached as annexure D).***

ATTESTED

8. That being aggrieved from the acts and omission of the respondents by not allowing the Pro-forma promotion to the appellant is illegal, unlawful and violative upon the rights of the appellant, the appellant filed this service appeal on the following grounds:

GROUNDS OF APPEAL:

A. That the appellant has not been treated in accordance with law. The respondents have not followed the Law and Rules governing promotion, thus the secured and guaranteed rights of the appellant have been violated.

B. That the appellant has performed his duty with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance.

C. That the despite of availability of 2 posts, one namely Dr. Malik Ayaz Wazir was promoted to BPS-20 but the appellant was not considered for promotion to BPS-20, which is illegal, unlawful, without lawful authority.

D. That it was also held in the PSB meeting held on 12.06.2020, that two posts in BPS-20 are laying vacant due to the death and conditional retirement on 13.02.2019 but however the Board considered promotion against one post. ***(Copy of the PSB meeting held on 12.06.2020 is attached as annexure E).***

E. That despite of the availability of post the appellant was not promoted to BPS-20 which is illegal unlawful and against the law and the appellant has retired from his service on 10.07.2020 vide notification dated 28.07.2020.

F. That the appellant after his retirement submitted his departmental appeal for Pro-forma Promotion to the post of BPS-20 but the same is not yet responded by the respondents.

G. That the appellant also submitted application under the RTI Act to the department for providing the seniority list and working papers of the appellant but the respondents turn deaf ear till date.***(Copy of the application is attached as annexure F).***

ATTESTED

H. That the appellant has a spotless service career of 60 years and denying his due right of promotion to the appellant is illegal, unlawful and without lawful authority.

I. That the appellant is superannuate on 10.07.2020 but still deprived of his promotion on account of the inaction of the respondents.

J. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, prayed that on acceptance of this Service Appeal the Pro-forma promotion may kindly be allowed to the appellant with all consequential benefits.

Appellant

Through

ZARTAJ ANWAR
Advocate Peshawar

&

IMRAN KHAN
Advocate Peshawar

AFFIDAVIT

I, Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergra District Lower Dir, do hereby solemnly affirm and declare that the contents of the above service Appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.

Deponent

ATTESTED

8 ANNEX. B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 442/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL. ... MEMBER(E)

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi Khan Timergara, District Lower Dir..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Agriculture, Livestock and Cooperative Department, Peshawar.
3. Director General (Extension) Livestock & Dairy Development Department, Khyber Pakhtunkhwa, Peshawar..... (*Respondents*)

Mr. Zartaj Awar,
Advocate ... For appellant

Mr. Fazal Shah Mohmand, ... For respondents
Additional Advocate General

Date of Institution.....21.03.2022
Date of Hearing.....13.06.2023
Date of Decision..... 13.06.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the acts and omissions of the respondents by not allowing proforma promotion to the appellant, against which he filed a departmental appeal on 22.11.2021 which was not responded even after the lapse of statutory period of ninety days. It has been prayed that on acceptance of the appeal, the appellant might be considered for proforma promotion to BPS-

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

20, with arrears and back benefits, from the date when his colleague was promoted i.e. 08.07.2020.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was performing his duties on the post of Executive District Director (BPS-19) in the respondent department. While serving in the said capacity, two posts of BS- 20 became vacant, one post was vacated due to the retirement of Dr. Sher Muhammad, Ex-Director General (Extension) L&DD, Khyber Pakhtunkhwa, Peshawar on 02.11.2019 and the other became vacant due to the sudden death of Dr. Syed Jahangir Shah, Ex-Principal AIITT, Khyber Pakhtunkhwa, Peshawar. A working paper for the two senior most officers in BPS-19 was sent for their promotion to BPS-20 to be placed before the Provincial Selection Board which included the name Dr. Malik Ayaz Wazir, who stood at serial no. 1 in the seniority list, and the appellant, who was at serial no. 2. Dr. Malik Ayaz Wazir was promoted to BPS-20, vide office order dated 08.07.2020, but the appellant was malafidely deprived from his due right of promotion to BPS-20 despite the availability of the post. Being aggrieved, he submitted several applications but in vain. He stood retired in BPS- 19 on 11.07.2020 vide notification dated 28.07.2020. The appellant submitted departmental appeal/ representation to the respondent department for his proforma promotion to BPS- 20 on 22.11.2021, which was not responded within the statutory period of ninety days; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the appellant was not treated in accordance with law. Despite availability of two posts, Dr. Malik Ayaz Wazir was promoted to BPS-20 but the appellant was not considered for promotion to BPS-20 which was illegal, unlawful and without lawful authority. He further argued that on retirement from service, the appellant was entitled for proforma promotion for which he preferred departmental appeal on 22.11.2021 but the same was not responded within the statutory period of ninety days. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that two posts of BPS-20 were lying vacant in the Directorate General (Extension), Livestock & Dairy Development, Khyber Pakhtunkhwa, one post was vacated due to the retirement of Ex-Director General, Dr. Sher Muhammad (BPS-20) on 02.11.2019, but due to pending issue of 60/63 years age, the retirement was notified conditionally on 18.03.2020 after the issuance of notification dated 16.03.2020 of the Khyber Pakhtunkhwa Establishment Department. He further informed that the other post was vacated due to the death of Dr. Syed Jahangir Shah on 01.04.2020. He argued that for promotion a panel of three senior most officers, including the appellant at Sr. No. 2, was placed before the Provincial Selection Board, however, the PSB considered promotion against one post by excluding the other post vacated by Dr. Sher Muhammad

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

as he was retired from service conditionally subject to the fate of CPLA related to the age of retirement which was pending before the august Supreme Court of Pakistan. The learned AAG contended that Dr. Malik Ayaz Wazir was promoted to BS-20 on the recommendation of PSB, as per rules, against a clear vacancy, while appellant was not considered due to non-availability of clear vacancy. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving in the respondent department as Executive District Director (BS-19), became eligible for promotion to BS- 20, and therefore, a working paper for consideration of Provincial Selection Board was prepared for its meeting which was held on 12.06.2020. According to the working paper out of total three positions of Director General/Principal/Director (BS-20), one was occupied and two posts were vacant. One of the vacancies fell vacant as a result of death of one, Syed Jehangir Shah, and the other post was pending for the decision of the august Supreme Court of Pakistan regarding a CPLA against the judgment dated 19.02.2020 passed in Writ Petition No. 5673-P/2019 of the Peshawar High Court in a case of enhancement of retiring age of civil servants from 60 to 63 years. Dr. Sher Muhammad was to retire on 02.11.2019 after attaining the age of 60 years but he was conditionally retired from service subject to the outcome of the pending CPLA, which means that the post would have become vacant on that date. Later, the retiring age was reversed from 63 to 60 years and the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2021 (Act No. XI of 2021) was enforced from 31st July 2019.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7. From the above discussion, there is no doubt that the appellant was at Sr. No. 2 of the penal of officers for consideration of promotion to BS-20 and was eligible in all respects for that promotion but was not considered for want of a clear vacancy. In the light of amendment in the Khyber Pakhtunkhwa Civil Servants Act, Act No. XI of 2021, a clear vacancy became available on 02.11.2019. Had the Provincial Government not amended the retirement age to 63 and the case would not have been subjudice before the superior courts, the promotion of the appellant would have been considered by the PSB. In this entire scenario, it is felt that there was no fault or shortcoming on the part of the appellant, then why he should suffer for an action that was taken by someone else and which was later on undone, retrospectively?

8. In view of the foregoing, the appeal in hand is allowed and the respondents are directed to promote the appellant from the date when his other colleague was promoted based on the recommendation of PSB meeting dated 12.06.2020, in which name of the appellant was included at Sr. No. 2 of the panel of officers for consideration, and allow him all the pensionery benefits under the law. Costs to follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of June, 2023.*

(FAREEHA PAUL)
Member (E)

(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/07/2023

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Dat 13/07/2023

Date of 13-07-2023

13 Annex "C"

Dated: 25th July, 2023.

To

DNO. 4579
Dated. 27/07/23

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel.

Subject: **APPEAL FOR COMPLIANCE OF THE JUDGMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL APPEAL NO.442/2022 OF DR. RAHIMULLAH BPS-19 EX-DISTRICT DIRECTOR LIVESTOCK DIR LOWER FOR PROMOTION TO BPS-20**

Respected Sir,

It is please stated the undersigned joined Livestock & Dairy Development Department (Extension), Khyber Pakhtunkhwa on 1st May, 1986 as Veterinary Officer (Health) BPS-17, promoted to BPS-18 in 2010 and BPS-19 in 2012 and worked at different position in the department.

Two posts in BPS-20 were vacant; the Department of Livestock & Dairy Department Khyber Pakhtunkhwa submitted the names of the following BPS-19 Officers to the forum for promotion to BPS-20:

1. Dr. Malak Ayaz Wazir, BPS-19,
   Director, Cattle Breeding & Dairy Farm, Harichand.

2. Dr. Rahimullah, BPS-19,
   District Director Livestock, Dir Lower.

The officer at S.No.1 in the seniority list was promoted to BPS-20 by the PSB in its meeting held on 12.06.2020, while the undersigned, being the senior most in the seniority list of BPS-19 after the promotion of Dr. Malak Ayaz Wazir was not considered for promotion against the second BPS-20 vacant post due to CPLA/Government decision about retirement age 60/63 years.

An appeal was submitted to the Honorable Khyber Pakhtunkhwa, Service Tribunal, Peshawar for consideration and was accepted (copy of Judgment is enclosed).

It is therefore, humbly requested that as per judgment of the Khyber Pakhtunkhwa, Service Tribunal Services Appeal No. 442/2022, the undersigned may kindly be considered for promotion to BPS-20 w.e.f 12.06.2020 and allowing all pension benefits in BPS-20, please.

Encl: As above.

(DR. RAHIMULLAH)
EX. DISTRICT DIRECTOR LIVESTOCK
DIR LOWER

Received with thanks by
Record Officer
27/07/23

ATTESTED

POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Service Tribunal Peshawar

Dr. Rehana Qasim } For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK and others } **Defendant**
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromisesor other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employee any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____ the _____ day to _____ the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____

IMRAN KHAN
Advocate High Court
Mob: 0345-9090648

ZARTAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-5, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cant.
Mobile-0331-9599185
BC-10-9851
CNIC: 17301-1610454-5