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## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR


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Mr. Jangraiz Khan vs Health Department

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Muharir Compilation

  
29/5/24



Annex-I

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

No. SO(Policy)E&AD/1-13/2019

Dated Peshawar, the 30<sup>th</sup> March, 2021

To:

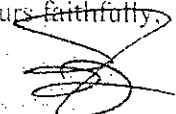
1. The Additional Chief Secretary, Khyber Pakhtunkhwa, Planning & Development Department.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa,
4. All Heads of Attached Department, Khyber Pakhtunkhwa.
5. All Divisional Commissioner, Khyber Pakhtunkhwa.

Subject: KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ORDINANCE, 2021

Dear Sir,

I am directed to refer to the subject and to enclose herewith a copy of the Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021 issued vide notification No. LEGIS:1 (21) 73 dated 26-03-2021. Specimen Notifications under Section 13(A)(1) and Section 13A(2) of ibid Ordinance are attached for further necessary action at your end please.


Yours faithfully,

  
SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
3. The Accountant General, Khyber Pakhtunkhwa.
4. The Registrar, Peshawar High Court, Peshawar.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Reg), Establishment Department.
9. PS to Special Secretary (Estab), Establishment Department.

  
SECTION OFFICER (POLICY)

Service Appeal No. 1792/2022 titled "Jangraiz Khan versus Secretary, Health Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others".

ORDER

03<sup>rd</sup> April, 2024 **Kalim Arshad Khan, Chairman:** Appellant along with his counsel present. Mr. Muhammad Jan, District Attorney assisted by Mr. Ali Gohar Durrani, Legal Advisor for the respondents present.

2. After arguing the matter at certain length when the learned counsel for the parties were confronted with the impugned order, wherein there was nothing stated about the back benefits as well as treatment of the intervening period and also mentioning the words "till further orders", they very fairly and frankly agreed that let this matter be sent back to the authority concerned to pass an appropriate order covering the issue of back benefits as well as the intervening period. The learned counsel for the appellant requests that time frame may be given to the respondents for doing what is necessary, so two months time is given to the respondents from the date of receipt of copy of this order to pass appropriate order. Disposed of accordingly. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of April, 2024.*



(Rashida Bano)  
Member (Judicial)




(Kalim Arshad Khan)  
Chairman


SCANNED  
KPST  
Peshawar

S.A No. 1792/2022

08<sup>th</sup> Dec. 2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for respondents No. 1, 2 & 4 present. Mr. Ihsanullah, Pharmacist on behalf of respondent No. 3 present and seeks adjournment on the ground that Legal Advisor for respondent No. 3 is not available today. To come up for arguments on 03.04.2024 before the D.B. Parcha Peshi given to the parties.

  
(Salah-ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*

SCANNED  
KPST  
Peshawar

17.07.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Ihsanullah, Assistant for the respondents present.

Reply/comments on behalf of respondent No. 3 submitted which are placed on file. Copy of the same handed over to learned counsel for the appellant. Reply/comments on behalf of respondents No. 1, 2 & 4 are still awaited. Learned Assistant Advocate General seeks time to contact the respondents No. 1, 2 & 4 for submission of reply/comments. Adjourned. To come up for reply/comments on 18.08.2023 before S.B. P.P given to the parties.

(Muhammad Akbar Khan)  
Member (E)

\*KaleemUllah\*

SCANNED  
KPST  
Peshawar

18.08.2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General alongwith Laeeq Ahmad, Assistant for the respondents present.

2. Written reply on behalf of respondents submitted which is placed on file. A copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for arguments on 08.12.2023 before D.B. P.P given to parties.

(Rashida Bano)  
Member (J)

\*KaleemUllah\*

SCANNED  
KPST  
Peshawar

02.05.2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Ihsanullah, Assistant for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned. To come up for reply/comments on 07.06.2023 before S.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*

07<sup>th</sup> June, 2023

01. Clerk of counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Ihsanullah, ASI for the respondents present.

SCANNED  
KPST  
Peshawar

02. Reply/comments on behalf of the respondents have not been submitted. Representative of the respondents requested for further time. ~~\_\_\_\_\_~~ To come up for written reply/comments on 17.07.2023 before the S.B. Parcha Peshi given to the parties.

(FAREEHA PAUL)  
Member (E)

\*Fazle Subhan, P.S\*

26.01.2023

Clerk of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for preliminary hearing on 14.03.2023 before the S.B.

(Salah-Ud-Din)  
Member (J)

14.03.2023

Learned counsel for the appellant present. Preliminary arguments heard.

**SCANNED**  
**KPST**  
**Peshawar**

Points raised need consideration. The appeal is admitted to regular hearing subject to all just and legal objections by the other side. The appellant is directed to deposit security fee within ten days. The respondents be summoned through TCS, the expenses of which be deposited by the appellant within ten days. To come up for reply/comments on 02.05.2023 before S.B. P.P given to learned counsel for the appellant.

*Rs-100/-*  
**Appellant Deposited**  
**Security & Process Fee**  
*A. H. Khan*  
*29/3/23*

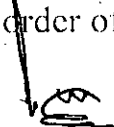
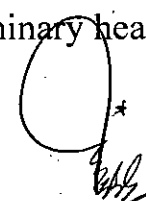
(Muhammad Akbar Khan)  
Member (E)

(6)

# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1792/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/12/2022	<p>The appeal of Mr. Jangraiz Khan presented today by Mr. Inayatullah Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <del>15-12-22</del> Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman    REGISTRAR</p>
	15.12.2022	<p>Clerk of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today, due to strike of lawyers. Adjourned. To come up for preliminary hearing on 26.01.2023 before S.B.</p> <p style="text-align: right;">   (Mian Muhammad)  Member (E) </p>

SCANNED  
KP  
Peshawar

SCANNED  
KP  
Peshawar





8

**BEFORE THE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Appeal No. 1792 /2022

**SCANNED**  
**KPS,**  
**Peshawar**

Jangraiz Khan.....Appellant

**V E R S U S**

Secretary, Health Department and others

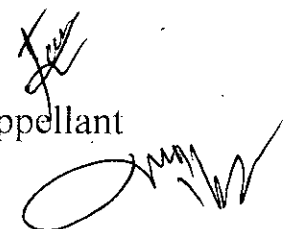
.....Respondents

**I N D E X**

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal along with	*	1-7
2.	Affidavit	*	8
3.	Addresses of Parties	*	9
4.	Copy of FIR	A	10
5.	Copy of officer order dated 24/04/2019	B	11
6.	Copy of reinstatement order dated 24/01/2022	C	12
7.	Copy of judgment dated 31/11/2021 of Peshawar High Court, Bannu Bench	D	13-28
8.	Copy of service book	E	29-35
9.	Copy of departmental appeal dated 17/09/2022 along with receipts	F	36-39
10	Wakalatnama	*	40

Through

Appellant

  
Inayatullah Khan  
Advocate Supreme  
Court of Pakistan  
LL.M (UK)  
Cell# 0333-9227736

Date: 17 /12/2022

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1

**BEFORE THE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Appeal No. 1792 /2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 2296

Dated 13-12-2022

Jangraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida  
Kokal Khel Surani, Tehsil & District Bannu  
(Ward Orderly, BPS-05) at the office of Additional Hospital Director  
DHQ, Teaching Hospital, Bannu).....Appellant

**V E R S U S**

1. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. Director General Health, Govt. of Khyber Pakhtunkhwa,  
Peshawar.
3. Additional Hospital Director, DHQ, Teaching Hospital, Bannu.
4. District Accounts Officer, District Bannu.

.....Respondents

**APPEAL UNDER SECTION 4 OF KP**  
**SERVICES TRIBUNAL ACT 1974 FOR**  
**GRANT OF BACK BENEFITS W.E.F**  
**01/02/2017 TO 23/01/2022 FOR A PERIOD**  
**OF 5 YEARS AND 23 DAYS.**

**AS THE APPELLANT WAS ACQUITTED**  
**FROM THE CRIMINAL CHARGES BY THE**  
**HON'BLE PESHAWAR HIGH COURT,**  
**BANNU BENCH VIDE ORDER DATED**  
**03/11/2021 PASSED IN CRIMINAL APPEAL**  
**NO. 57-B/2019.**

Filed to-day

Registrar

13/12/2022

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2

THE APPELLANT FILED  
DEPARTMENTAL APPEAL DATED  
17/09/2022 TO RESPONDENT NO.2 WITH A  
COPY TO RESPONDENT NO.1 FOR  
GRANT OF BACK BENEFITS BUT THE  
SAME HAS NOT BEEN RESPONDED  
DESPITE LAPSE OF STATUTORY PERIOD  
OF 90 DAYS. HENCE CONSTRAINED TO  
FILE THE INSTANT SERVICE APPEAL  
BEFORE THIS HON'BLE TRIBUNAL  
WITHIN 30 DAYS WHICH IS WELL  
WITHIN TIME.

**Prayer in Appeal:**

On acceptance of this service appeal, with directions to the officials respondents to forthwith pay back benefits/arrears of pay, increments and promotion for the intervening period w.e.f 01/02/2017 to 23/01/2022 for a period of 5 years and 23 days as the appellant was trapped in a false and concocted case on the basis of trumped up charges in the light of Fundamental Rule 54 and reports judgments of the Apex Courts i.e. "2021 SCMR 962", "2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752".

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**Respectfully Sheweth:**

Brief fact giving rise to the instant Service Appeal for grant of back benefits, areas of pay, increments and promotion if due are as under:

1. That the appellant is the permanent employee of office of Director General Health Khyber Pakhtunkhwa, Peshawar and as such performing his duties as **Ward Orderly (BPS-05)** at the office of Additional Hospital Director, DHQ, Teaching Hospital Bannu.
2. That the appellant was charged in Case FIR No. 619, dated 12/11/2017, Under Sections 302, 324, 295, r/w 34 PPC, Police Station, Basya Khel, District Bannu.  
**(Copy of FIR is attached as Annexure-A)**
3. That the appellant was convicted by the Court of Additional Sessions Judge-I, Bannu, vide judgment dated 05/03/2019 and thereafter he was dismissed from service vide office order dated 24/04/2019.  
**(Copy of office order dated 24/04/2019 is attached as Annexure-B)**
4. That the appellant was acquitted by the Hon'ble Peshawar High Court, Bannu Bench vide judgment dated 30/11/2021 by allowing Criminal Appeal No. 57-B/2019, hence the department reinstated/restored him in service in the light of above referred judgment vide order dated 24/01/2022.

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**(Copy of reinstatement order dated 24/01/2022 is attached as Annexure-C and judgment dated 31/11/2021 of Peshawar High Court, Bannu Bench is attached as Annexure-D)**

5. That the appellant also applied for leave for a period of 365 days w.e.f 01/02/2017 which was allowed by the department as evident from his service book but no salary was paid to him w.e.f 01/02/2017 till his reinstatement order dated 24/01/2022.

It is pertinent to mention here that the appellant was falsely implicated in a baseless, concocted criminal case from which he has been acquitted by the Hon'ble Peshawar High Court, Bannu Bench.

**(Copy of service book is attached as Annexure-E)**

6. That the appellant has been reinstated/restored in service vide order dated 24/01/2022 but without paying him a single penny w.e.f 01/02/2017 to 23/01/2022 for intervening period which is calculated as 5 years and 23 days. That the appellant remained in jail since his arrest.
7. That the appellant filed departmental appeal dated 17/09/2022 for grant of back benefits before the respondent No.2 with a copy to respondent No.1 but the same has not been responded despite lapse of statutory period of 90 days.

It is pertinent to mention that the matters relating to back benefits is a continuous cause of action as per reported judgments of Superior Courts.

**(Copy of departmental appeal dated 17/09/2022 is attached as Annexure-F)**

8. That the appellant feeling aggrieved, though filed departmental appeal for grant of back benefits before the respondents but the same has not been responded therefore constrained to approach this Hon'ble Tribunal inter alia on the following grounds:

**GROUNDS:**

- A. That the appellant is entitled to full pay, back benefits/arrears of pay along with increments and promotion if due in the light of **Fundamental Rule 54** and reported judgment of the Apex Court "**2021 SCMR 962**" wherein it has been held that upon unconditional reinstatement in service the Civil Servant is entitled to full pay if he is not reemployed elsewhere in the intervening period. Since the appellant remained in jail, therefore, there was no chance to work elsewhere or gain financially.
- B. That it would be unjust to deprive the Civil Servant of back benefits for the intervening period, he remained out of job without any fault on his part in the light of reported

(14)

(6)

judgments “2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752”.

- C. That the August Supreme Court of Pakistan in a reported judgment “2013 SCMR 752”, wherein it was held that back benefits includes salaries, increments and promotion to which the Civil Servant is entitled during the intervening period upon his reinstatement.
- D. That the appellant having 27 years unblemished service at his credit and always performed his duties to the entire satisfaction of his immediate superiors without any complaint against him, therefore, keeping in view his good track record, he is legally speaking, fully entitled to back benefits, arrears of pay, increments and promotion.
- E. That the appellant having 3 boys and a girl, all studying in their respective schools and he is the only source of income, also make him entitle for grant of full back benefits to look after his family who was falsely implicated in a concocted case on the basis of trumped up charges.

**Keeping in view, what has been stated above, it is, therefore, humbly prayed to allow this Service Appeal with directions to the officials respondents to forthwith pay back benefits/arrears of pay, increments and promotion for the intervening period w.e.f 01/02/2017 to 23/01/2022 for a period of 5 years and 23 days as the appellant was trapped in a false and concocted case on the basis of trumped up charges in the**



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light of Fundamental Rule 54 and reports judgments of the Apex Courts i.e. "2021 SCMR 962", "2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752".

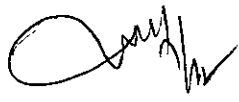
OR

Any other relief to whom the appellant found entitled in the given facts and circumstances and not specifically asked for may also be granted.



Appellant

Through



**Inayatullah Khan**  
Advocate Supreme  
Court of Pakistan  
LL.M (UK).

17/12/22  
Date: 17/12/2022

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8

**BEFORE THE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Appeal No. \_\_\_\_\_/2022

Janraiz Khan.....Appellant

**VERSUS**

Secretary, Health Department and others

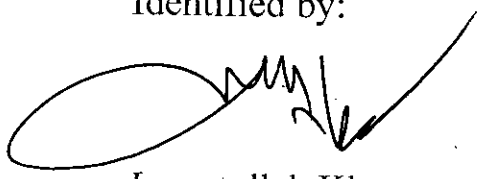
.....Respondents

**AFFIDAVIT**

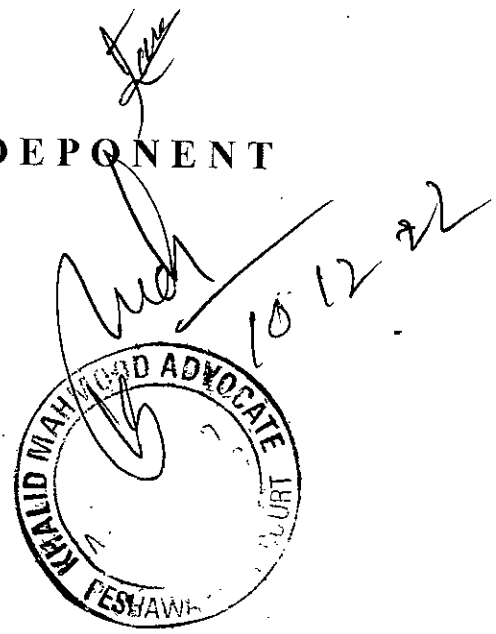
I, Janraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida Kokal Khel Surani, Tehsil & District Bannu (Ward Orderly, BPS-05) at the office of Additional Hospital Director DHQ, Teaching Hospital, Bannu), do hereby solemnly affirm and declare on oath that the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Identified by:

**DEPONENT**



Inayatullah Khan  
Advocate Supreme Court of Pakistan  
LL.M (UK)

  
10/12/22



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9

**BEFORE THE SERVICES TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Appeal No. \_\_\_\_\_ /2022

Jangraiz Khan.....Appellant

**V E R S U S**

Secretary, Health Department and others

.....Respondents

**ADDRESSES OF PARTIES**

**APPELLANT**

Jangraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida  
Kokal Khel Surani, Tehsil & District Bannu  
(Ward Orderly, BPS-05) at the office of Additional Hospital Director  
DHQ, Teaching Hospital, Bannu)

**RESPONDENTS**

1. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. Director General Health, Govt. of Khyber Pakhtunkhwa,  
Peshawar.
3. Additional Hospital Director, DHQ, Teaching Hospital, Bannu.
4. District Accounts Officer, District Bannu.



Appellant

Through



Inayatullah Khan  
Advocate Supreme  
Court of Pakistan  
LL.M (UK)

Date: 17 /12/2022





**ATTESTED**

*[Handwritten signature]*

Attested to be  
True Copy

*[Handwritten signature]*

*[Handwritten signature]*  
Additional Hospital Director  
DHO MTL Bannu

Copy to the:-  
Secretary Board of Governors Medical Teaching Institutions (Bannu)  
Director Finance Medical Teaching Institutions Bannu  
Accountant Distt. Headquarter Medical Teaching Institutions Bannu  
Jangrez Khan, Wardorderly DHO MTL Bannu

Bannu dated the 24/04/2019

Additional Hospital Director  
DHO MTL Bannu

OFFICE ORDER  
Mr. Jangrez Khan, Wardorderly District Headquarter Medical Teaching Institutions Bannu is convicted by the Honourable Adlt. Session Judge-I Bannu on 05-03/2019. Now after conviction Mr. Jangrez Khan, Wardorderly Distt. Headquarter Hospital Bannu is hereby dismissed from service from the date of judgment of the Honourable Additional Session Judge-I Bannu.

ADDITIONAL HOSPITAL DIRECTOR  
DISTT. HEADQUARTER MTL, BANNU.  
No. 5 Fax No 0925-9270260 Email: dho@bannu.gov.pk Date: 24/04/2019

**ANNEXURE B**

(11)  
(20)

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ANNEXURE C



**OFFICE OF THE ADDITIONAL HOSPITAL DIRECTOR  
DHQ, TEACHING HOSPITAL (MTI) BANNU.**

Khyber Pakhtunkhwa, Pakistan

Ph: & Fax No. 0928-9270280

Email: [dhqthbannu@gmail.com](mailto:dhqthbannu@gmail.com)

No. \_\_\_\_\_ /

Dated: \_\_\_\_/01/2022

**OFFICE ORDER.**

In response to the notification issued vide order no. 2049 dated 24/04/2019 ward orderly Mr. Jangraz Khan designated as ward orderly immediately restored as in the light of judgement of honorable Peshawar High Court Bannu Bench Bannu till further orders.

**Additional Hospital Director  
DHQTH MTI Bannu**

No. 297 / DHQTH

Dated 24 /01/2022

**Copy to:**

1. Medical Director, KGNTN MTI Bannu
2. Hospital Director, KGNTN MTI Bannu
3. Secretary BoG, KGNTN MTI Bannu
4. Director Finance, KGNTN MTI Bannu
5. Accounts Officer, DHQTH MTI Bannu
6. Assistant HR, DHQTH MTI Bannu
7. Concerned Official (Mr. Jangraz Khan Ward Orderly, DHQTH MTI Bannu).

*[Signature]*  
Additional Hospital Director  
DHQTH MTI Bannu

*[Signature]*  
Attested to be  
True Copy

*[Signature]*  
**ATTESTED**

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ANNEXURE

D

**Judgment Sheet**  
**PESHAWAR HIGH COURT, BANNU BENCH.**  
*[Judicial Department]*

**Cr.A. No.57-B/2019**

Waheed Khan and others.

Vs.

The State etc.

**JUDGMENT**

For Appellants: Mr. Anwar-ul-Haq advocate

For State: Mr. Saif-ur-Rehman Addl: A.G

For Respondents: Muhammad Rashid Khan Dirma  
Khel advocate.

Date of hearing: 30.11.2021

\*\*\*\*\*

**SAHIBZADA ASADULLAH, J.** The appellants have assailed the judgment dated 05.03.2019, rendered by learned Additional Sessions Judge-I, Bannu, whereby the appellants involved in case F.I.R No. 619 dated 12.11.2017 registered at Police Station Basia Khel, District Bannu, were convicted under section 302(b) P.P.C and sentenced to imprisonment for life alongwith compensation of Rs.5,00,000/- under section 544-A Cr.P.C to be paid to the legal heirs of deceased or in default thereof, to suffer six month simple imprisonment. They were further convicted under section 324 P.P.C, and sentenced to three

*[Signature]*

*dyh*  
Attested to be  
True Copy

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**ATTESTED**



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years imprisonment with fine of Rs. 1,00,000/- or in default thereof to further undergo three months simple imprisonment. All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was extended to the convicts/appellants.

2. The concise facts as gleaned from the F.I.R are that on 12.11.2017 at 22:45 hours, the complainant Shah Khalid (PW-07), while present with the dead-bodies of Yasir Khan and Zeeshan, reported the matter in emergency room Civil Hospital, Bannu, to the effect that he alongwith Yasir Khan and Zeeshan had prepared *sobani Panda* in his Baithak and after eating meal, Yasir Khan and Zeeshan were going towards their house, while he (the complainant) was going to the house of his uncle, so all the three riding on motorcycle driven by Yasir Khan, while he and Zeeshan was on pillion, when they reached on main road, meanwhile, they noticed accused Waheed, Jangrez and Saifullah, duly armed with Kalashnikovs on one side of the road, while Afnan and Israr Ali alias Malik, duly armed with Kalashnikovs on other side of the road were present. The accused on seeing the complainant party, started firing at them, as a result, Yasir Khan and Zeeshan were hit and all the three fell down from motorcycle. Accused after

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Attested to be  
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commission of the occurrence decamped from the spot. When he attended both the injured, they had expired. Motive for the offence was stated to be previous blood-feud. The report of complainant was reduced in shape of Murasila (Ex: PW 1/1) by Noor Liaq Khan ASI and sent the same to the Police Station through constable Waseem No.198, which was culminated into F.I.R (Ex: PW 3/1), ibid. Noor Liaq Khan ASI (PW-01) prepared injury sheets of the deceased and inquest reports ( Ex: PW 1/2 to Ex: PW 1/5) and dispatched the dead-bodies to the doctor for postmortem examination under the escort of constable, Shahid Khan No.1585 (PW 06).

3. On completion of investigation complete challan was submitted against the accused before the Court, where at the commencement of trial, the produced and examined as many as nine (09) witnesses, whereafter, statements of accused were recorded under section 342 Cr.P.C, wherein they denied the allegations and professed innocence, however, all the three accused/ appellants opted to be examined on oath as provided under section 340(2) Cr.P.C and to produce defence evidence. The accused produced Khan Muhammad, as DW-1 and Ihsanullah as

ATTESTED  
 Court  
 Bannu Bench

*dyk*  
 Attested to be  
 True Copy

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**ATTESTED**

DW-02, however, they did not opt to be examined on oath under section 340 (2) Cr.P.C. The learned trial Court after hearing arguments of learned counsel for the parties, vide impugned judgment dated 05.03.2019, convicted the accused and sentenced them, as mentioned above. The convict/ appellants preferred instant criminal appeal, while the complainant moved criminal revision petition No.21 -B of 2019 for enhancement of sentence, as both the appeal and revision petition are the outcome of one and the same impugned judgment, therefore, are going to be decided through this common judgment.

4. Arguments of learned counsel for the parties assisted by learned Addl: A.G representing the State heard and record gone through with their valuable assistance.

5. Though the matter was comprehensively dealt with by the learned trial Court and the learned trial Court while passing the impugned judgment did apply its judicial mind to the facts, circumstance and the evidence available on file, but this being the Court of appeal is under the obligation to reassess the already assessed evidence and to see, as to whether the impugned judgment qualifies the test under section 367 (5) of the Code of Criminal

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Procedure and as to whether the reasoning advanced by the learned trial Court suits the situation and the circumstances of the case. There is no denial to the fact that in the incident two young boys were done to death which led to a charge against the appellants and others, but equally true that the Courts must not be swayed by the influence and the attending circumstances of the cases, rather the Courts seized of the matter must walk with care and caution, as these are the custodians of the rights of the parties involved in the episode.

6. The tragic incident occurred on 12.11.2017 at 20:45 hours, when the deceased in the company of the complainant were fired at, which led to the death of the deceased Zeeshan and Yasir Khan, whereas the complainant escaped unhurt. The matter was reported by the complainant to the local police in the Emergency Room of Civil Hospital, Bannu, where the appellants alongwith others were charged for the murder of the deceased and ineffective firing upon the complainant. After drafting the murasila, the inquest reports and injury sheets were prepared and after doing the needful, the dead-bodies were sent to the doctor for postmortem examination.

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7. The Investigation Officer visited the spot on the night of occurrence, where blood-stained earth from respective places of the deceased was taken into possession and also 20-empties of 7.62 bore near from the places of the accused were taken into possession. It is pertinent to mention that out of the empties, four recovered near from the place of absconding co-accused Afnan, were sent to the Firearms Expert alongwith a Kalashnikov recovered from the house of the absconding co-accused Afnan, which after examination, was found wedded with the recovered empties. On the next day of the incident i.e. early in the morning, the Investigating Officer prepared the site-plan on the pointation of the complainant and also took into possession the motorcycle used by the deceased for travelling to their houses. The accused/ appellants, soon after the incident volunteered their arrest in the shape of bail before arrest, which did not find favour with the learned Court below and was dismissed, which resulted into arrest of the accused/ appellants.

8. The questions to be decided by this Court are; as to whether the incident occurred in the mode and manner and at the stated time; as to whether the accused/appellants were duly

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identified, that too, in the headlights of the motorcycle; as to whether the complainant succeeded in establishing his presence on the spot at the time of incident and as to whether the motive advanced by the complainant was the urging factor with the appellants to kill the deceased.

9. The complainant was examined as PW-07, who stated that during the days of occurrence, he was serving in police department and was posted at Bannu. It was on getting leave for seven days from his duties that he came to his house and that on the night of incident he invited his friends i.e. the deceased for *Sobat/painda*, to his Baithak and that after taking the meal, when the deceased were leaving for their village, he too accompanied them to visit the house of his uncle. He further stated that on reaching to the place of incident, the accused/appellants were present duly armed, who on seeing the deceased started firing at them, which resulted into the death of the deceased and he escaped unhurt. The complainant was examined on material aspects of the case. There is no denial to the fact that the complainant had blood feud with the accused/ appellants and that the deceased had nothing to do with the motive, and that the ruthless killing of the deceased,

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that too, when the complainant did not receive even a single injury, belies the stance of the complainant to a greater extent notwithstanding the fact that allegedly he was seated with them on their pillion. Had the complainant been present, being the prime target, he would not have been spared by the appellants, instead of killing the disinterested persons. The record tells that at the time of incident darkness had prevailed and that there was no electricity available at the spot, though the complainant stated that the bulbs were lit, on the walls of the mosque, but in the same breath he admitted that the only and only source of identification was the headlight of the motorcycle. On this particular aspect of the case, Zabibur Rahman SI, the Investigating Officer, who appeared as PW-08, stated that when he visited the spot, he did not see the provision of electricity and even he did not find any bulb available at the place of incident. When the statements of the two are read together, they contradicted each other to a greater extent, even otherwise, there is no denial to the fact that both the witnesses

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assailants and that at the time of incident the headlight of the motorcycle was in working condition. This being an important piece of evidence was not investigated by the Investigating Officer and even no reports from an auto electrician was received in that respect, even otherwise, to identify assailants in the headlight of a motorcycle, who were standing at a considerable distance; is hardly believable. The complainant stated that he was sitting on the rear seat i.e. on the 3<sup>rd</sup> position on the motorcycle and in that eventuality, when he was having the hindrance of the deceased sitting in front, it turns nearly impossible to identify the assailants standing in the darkness. The complainant could not establish the identity of the appellants on record so to proceed further, in order to determine fate of the appellants, that too, on the statement of the sole interested witness extraordinary care and caution is needed.

10. Another important aspect of the case is that the incident occurred at 20:45 hours, whereas the matter was reported to the local police at 22:45 hours, in the emergency room of the Civil Hospital, Bannu, after a considerable delay of two hours, which the prosecution could not explain. It is pertinent to mention that the doctor, while conducting the postmortem examination

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Postmortem Court  
Bannu Bench

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mentioned the time between death and injury in case of the deceased Zeeshan as 30-minutes to one hour, meaning thereby that after receiving the firearm injuries the deceased Zeeshan survived for long 30-minutes to one hour, but no efforts were made either by the complainant or people of the locality to shift him to the hospital to save his life. The distance between the spot and Police Station Basia Khel has been given as 5/6 kilometers, but the dead-bodies reached to the hospital after a considerable delay, which tells otherwise regarding presence of the complainant at the time of incident. The presence of the complainant is further doubted that neither he identified the dead-bodies before the police nor before the doctor at the time of postmortem examination; so much so, in the relevant column of inquest report the complainant figures nowhere.

11. Zabibur Rahman SI, the Investigating Officer was examined as PW-08, who was questioned on material aspects of the case, who stated that he recovered empties along with blood stained earth from the place of incident on the night of incident, but the record tells that the site-plan was prepared on the next day of the incident. The prosecution is to tell that why the site-plan was not

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prepared on the very night of the incident and that why the motorcycle was not taken into possession from the spot, when the Investigating Officer firstly arrived to the place of incident. The site-plan depicts that near the place of incident there was a guava orchard, though the complainant admitted the same but stated that, that was situated at a considerable distance, whereas the Investigating Officer stated that the same was available near the place of incident. Had the accused been with the intention to kill, then they would have accomplished their task from the same and would have easily concealed their identity, but the circumstances tell that the incident did not occur in the mode and manner. The complainant could not produce anything on record regarding his leave from the department and even no daily diary report was

concerned, so much so, the Investigating

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the deceased was 21/22 years of age and the other only 17. The relationship between the three does not appeal to a prudent mind, even the Investigating Officer did not visit the Baithak of the complainant to get it confirmed, as to whether in fact all the three had dined together and even the Investigating Officer did not inquire from the father of the complainant regarding presence of the deceased at the time before the incident in the Baithak of his house. The attitude displayed by the complainant is not only unusual but abnormal as well, as he admitted that they had blood feud with the appellants and others in the village and that in routine he used an alternate route to visit his old house, and that often avoid using the present path. Despite the fact, that the complainant had enmities in the village, he did not keep in possession weapon for his defence. The record tells that the complainant had numerous enmities in the village and that he had blood-feud with the appellants but surprisingly, he was not killed despite the fact he was at mercy of the appellants. The statement of the complainant tells that there was ample opportunity for the appellants to kill, but his escaping unhurt confirms that he was not present at the time of incident. We are surprised to note that why the complainant joined

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the deceased while they were leaving for their homes and that when the complainant had to visit the house of his uncle, then why he did not opt for his own motorcycle, as he was to come back, it tells nothing but that an abnormal attempt was made to establish his presence on the spot, but the complainant did not succeed in persuading us to travel that way.

13. The medical evidence does not support the case of the prosecution, as the assailants were standing in front of the deceased to either side of the road and that one of the deceased received firearm injuries on his back. When all the three were sitting packed, then in that eventuality, there was no occasion for the complainant to have escaped unhurt, rather after making its exit the bullets must have struck the complainant. The seat of injuries on person of the deceased, when read with the site-plan, it does not get support from there and even the medical evidence does not support the case of prosecution. The conflict between the two has damaged the prosecution case to a greater extent. True, that the medical evidence is confirmatory in nature and in presence of trustworthy ocular account, the same cannot overshadow the prosecution case, but when the eyewitness account suffers from

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infirmities, then in that eventuality recourse can be made to the medical evidence and the present case is no exception. The conflict between the medical evidence and ocular account has damaged the prosecution case beyond repair.

14. Though the complainant charged the appellants for the murders of the deceased but none from the house of the deceased supported the claim of the complainant against the appellants, which is another factor which cannot be lightly ignored. The record tells that the accused/ appellants had no motive against the deceased and that the prosecution did not succeed in linking the appellants with the murders of the deceased. Though motive was advanced by the complainant to be a blood-feud between the sides, but the Investigating Officer did not collect anything on record to substantiate the claim of the complainant. The motive was only and only with the complainant and that the appellants had no reason to kill. True, that absence or weakness of motive will not spoil the prosecution case, but equally true that when the motive is alleged, the prosecution is under the bounden duty to establish the same, but in the present case the safe exit of the complainant belies the stance of the complainant.

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15. The appellants soon after gaining the knowledge of their involvement in the matter volunteered their arrest by applying to the Court of competent jurisdiction and that they did not opt to abscond, despite the fact they had a serious charge against them. Even the Investigating Officer investigated the case in respect of their plea of alibi and the Investigating Officer admitted that the call data record collected tells that one of the accused was present at Peshawar. Even otherwise, the appellants opt to produce defence and they produced two witnesses in that respect, to establish their innocence on record, though the defence produced was not up to the mark and the learned counsel representing the complainant submitted that when the appellants produced defence and when they failed to establish their innocence through their own witnesses, then these were the appellants to be burdened, but we are not persuaded with the submissions of the learned counsel, as in all eventualities, this is the prosecution to prove its case to the hilt and if the accused takes a plea and if he does not succeed in establishing his innocence, even then the prosecution is under the bounden duty to establish his case beyond reasonable doubt. The

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burden only shifts when the accused takes a specific plea which is not the case in hand.

16. After evaluating the evidence from all angles, this Court reaches to an inescapable conclusion that the prosecution did not succeed in bringing home guilt against the appellants and that the impugned judgment is suffering from inherent defects and is devoid of reasons, which calls for no interference. resultantly, the instant criminal appeal is allowed, the impugned judgment is set aside and the appellants are acquitted from the charges. they shall be released forthwith if not required to be detained in connection with any other criminal case. As the instant criminal appeal against conviction has succeed and the impugned judgment has been set aside, so the connected criminal revision No. 21-B/2019 cannot proceed further, which being bereft of merit, is hereby dismissed.

Above are the detailed reasons of our short order of the even date.

Announced:  
30.11.2021

\*Asam/7.S\*

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04/12/21

Forwards to the Bench  
of  
The Criminal Justice Ordinance 1988

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12/12

(D.B)  
Hon'ble Mr. Justice S.M. Atiqo Shah &  
Hon'ble Mr. Justice Sahibzada Asadullah

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Name ( نام ) .....

Jangrooz Khan

Nationality and Religion .....

(قومیت اور مذہب)

Islam

Residence (مستقل رہائش) .....

vill. Bazidka Kakal Khul Teh.

Father's name and residence .....

(والد کا نام اور پتہ)

and Distt Bannu

Saufullah Khan

Date of birth by Christian era as nearly as can be ascertained .....

(تاریخ پیدائش مطابق سن عیسوی)

19-5-1976

Exact height by measurement .....

(قد و قامت)

5-8

Personal mark for identification .....

(نشان شناخت)

Scar on left knee joint

Left hand/right hand thumb and finger-impressions of (Non-gazetted) officer

(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger ( چھٹیا )

Ring Finger ( چھٹیا کے ساتھ کی انگلی )

Middle Finger ( اگلی ہاتھ )

Fore Finger ( اگلی شہادت )

Thumb ( انگوٹھی )

Signature of Government servant .....

(سرکاری ملازم کے دستخط)

Jangrooz Khan

Signature and designation of the Head of the Office, or other Attesting Officer .....

(تصدیق کنندہ افسر کے دستخط اور سر)

[Signature]

The entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحہ کے بندرجات کم از کم ہر پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9-10 میں دستخطوں کے نیچے تاریخ ہونی چاہئے۔ انگلیوں کے نشانات کے لئے ہر پانچ سال بعد تصدیق کی ضرورت نہیں۔

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1	2	3	4		5		6	7	8	9	
Name of Post درجہ ملازمت	Whether substantive or officiating and whether permanent or temporary عارضی، مستقل یا قائم مقام	If officiating state (i) substantive appointment or (ii) whether service count for pension under rules 3.20 of C.S.R. (Pb.) volume 11 اگر عارضی ہے تو کیا وہ رول کے مطابق پینشن کا مستحق ہے؟	Pay in substantive post مخوفاہ بطور عارضی ملازمت	Rs.	Ps.	Additional pay for officiating زائدہ مخوفاہ بطور قائم مقام	Other emoluments falling under the term "pay" باسوائے مخوفاہ دیگر الاؤنس	Date of appointment تاریخ تقرری	Signature and designation of the Head of the service or other Attesting officer in station of columns 1 to 8 دستخط سرکاری ملازم	1 to 8	دستخط اشرکاز
B-2	Rs 1275-64-1951		Rs.	Ps.	Rs.	Ps.					
Ward orderly DHE Hospital Banna	Admitted 2-Admission		Rs 1275/-		88/-			24/10/95 FM Sungar	BPS Me AK		
			Rs 1363/-								

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Signature and designation of the Head of the service or other Attesting officer in station of columns 1 to 8

8	9	10	11	12	13 (31)	14	15				
Signature of Government service دستخط سرکاری ملازم	Signature and Designation of the Head of the office or other Attesting officer in attestation of columns 1 to 8 دستخط افسر	Date of termination or appointment تاریخ اختتام ملازمت	Reason of termination (such as promotion transfer dismissal etc) وجوہات اختتام ملازمت ترقی یا برطرفی	Signature of the Head of the office of other attesting Officer دستخط افسر	<p>LEAVE Allocation of periods of leave on average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debited to another پہلے چھ ماہ یا نوٹک کی رخصت کے لئے اوسط تنخواہ کا قہین</p> <table border="1"> <tr> <th data-bbox="837 657 933 805">Period عرصہ</th> <th data-bbox="933 657 1069 805">Govt. to which debited گورنمنٹ جسے رقم ادا ہوگی</th> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Period عرصہ	Govt. to which debited گورنمنٹ جسے رقم ادا ہوگی			Signature of the head of the office of other Attesting officer دستخط افسر	Reference to an recorded punishment or censure or reward or praised of the Government servant سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
Period عرصہ	Govt. to which debited گورنمنٹ جسے رقم ادا ہوگی										
<p>Granted 30's day leave (120 days on full pay and balance on Half pay) W.O. 1-02-2017</p>											
<p>Mr. Jangrez Khan wasl order MTI, DHA Bann dismissed for Service vide Adm Hospital Dirct MTI, DHA Bann office order No. 2019 dated 24/6/19</p>											
<p>Additional Medical Officer Director Attested to be True Copy</p>											



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1	2	3	4		5		6	7	8	9
Name of Post	Whether Substantive of officiating any whether permanent or temporary.	If officiating state. (1) substantive appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (Pb) Volume II	Pay in substantive position		Additional pay for officiating		Other emoluments falling under the term pay	Date of appointment	Signature of government servant	Signature designating the Head of office or attesting officer in attestation column 1
درجہ ملازمت	عارضی مستقل قائم مقام	اگر عارضی ہے تو یہاں کے مطابق پیش کیا جاتا ہے؟	تختواہ بطور عارضی ملازمت	ناگہ تختواہ بطور قائم مقام	ماسوائے تختواہ دیگر الاؤنس	تاریخ تقرری	دستخط سرکاری ملازم	دستخط افسر مجاز		
BPS-05			Rs.	Ps.	Rs.	Ps.				
Ward overly				R. 21760/-			12/11/2021	3		
				Am						

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8	9	10	11	12	13	14	15	
Signature of Government servant	Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the officer or other Attesting Officer	Nature and duration of leave taken Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debit to another Government	Signature of the Head of the office other attesting officer	Reference to any recorded punishment of censure, or reward, or praised of the Government servants	
دستخط سرکاری ملازم	دستخط افسر مجاز	تاریخ اختتام ملازمت	وجوہات انتقال ملازمت ترقی یا بارے یا برطرفی	دستخط افسر مجاز	چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین Period Government to which debit عہدہ حکومت ہے	دستخط افسر مجاز	سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ	
<u>Fixation of Pay</u>								
		1-12-2012			Rs 8650			
		1-12-2013			8850			
		1-07-2014			9050 - 1/2 Pay			
		1-12-2014			9250 - 1/2 Pay			
		1-07-2015			11995			
		1-12-2015			12255			
		2-12-2015			12425 + 340 =		12765 / <del>12425</del>	
		1-07-2016			15730 /	Pay fixed 2016		
		1-12-2016			16150 /			
		1-07-2017			19280 /	Pay fixed 2017		
		1-12-2017			19760 /		digit	
		1-12-2018			20260 /		Attested to be True Copy	
		1-12-2019			20760 /			
		1-12-2020			21260 /			
		Service Verified upto date (or 30/11/2020 (A.P.))						Accounts Officer (HQ) MO Bannu
							Service verified up to 30-11-2020	

1. Name (نام) MZR: Jangraz Khan
2. Nationality and Religion Pakistani (Islam)  
(قومیت اور مذہب)
3. Residence village Boziola kokal khel, Tehsil  
Distt Bannu  
(مستقل رہائش)
4. Father's Name and Residence Saidullah Khan  
(والد کا نام اور پتہ)
5. Date of birth Christian era as  
nearly as can be ascertained 19-05-1976  
(تاریخ پیدائش مطابق سن عیسوی)
6. Exact height by measurement 5-8  
(قد و قامت)
7. Personal mark of identification Scar on Left Knee -  
Joint  
(نشان شناخت)

8. Left hand/right hand thumb and finger impressions of (Non-gazetted officer)

(مزد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چھنگلیا) Ring Finger (چھنگلیا کے ساتھ کی انگلی) Middle Finger (انگشت میاں)

Fore Finger (انگشت شہادت) Thumb (انگوٹھا)

Signature of Govt. Servant (سرکاری ملازم کے دستخط)

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10. Signature and designation of the Head of the Officer or other Attesting Officer

(تصدیق کنندہ افسر کے دستخط اور مہر)

AHD!

Note: The entries in this page should be renewed or re-aggested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after very 5 hears under this rule:

اس صفحہ کے مندرجہ کم از کم پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے نیچے تاریخ لکھنی چاہیے۔ انگلیوں کے نشانات کے لئے ہر پانچ سال کے بعد تصدیق کی ضرورت نہیں۔

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ANNEXURE F

36

To

The Director General Health,  
Govt of Khyber Pakhtunkhwa, Peshawar.

Subject:

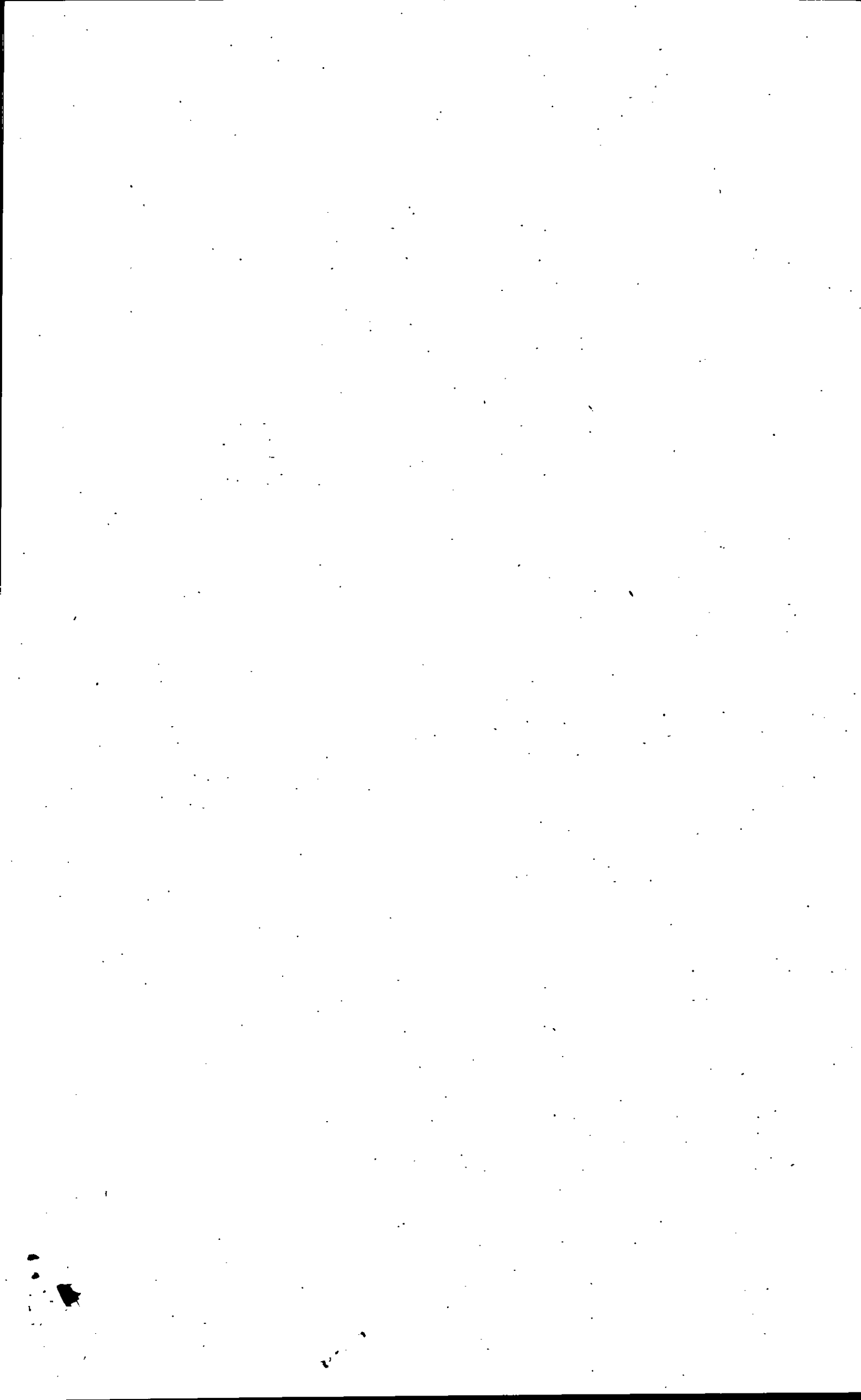
DEPARTMENTAL APPEAL FOR GRANT OF BACK  
BENEFITS WITH EFFECT FROM 01.02.2017 TILL  
23.01.2022 FOR A PERIOD OF 5 YEARS AND 23 DAYS  
AS THE APPELLANT WAS ACQUITTED FROM  
CRIMINAL CHARGES BY THE HON'BLE  
PESHAWAR HIGH COURT BANNU BENCH VIDE  
JUDGMENT DATED 30.11.2021 PASSED IN  
CRIMINAL APPEAL NO.57-B/2019.

Sir,

Brief facts giving rise to this Departmental Appeal for grant of back benefits, arrears of pay, increments and (promotion if due), are as under:-

1. That the appellant is the permanent employee of office of Director General Health Khyber Pakhtunkhwa, Peshawar and as such performing his duties as Ward Orderly (BPS-05) at office of Additional Hospital Director DHQ, Teaching Hospital (MTI) Bannu.
2. That the appellant was charged in case FIR No.619 dated 12.11.2017 Under Sections. 302, 324, 295 R/w 34 PPC Police Station Basya Khel District Bannu.
3. That the appellant was convicted by the Court of Additional District & Sessions Judge-I Bannu vide Judgment dated 05.03.2019 and thereafter he was dismissed from service vide impugned Office Order dated 24.04.2019.
4. That the appellant was acquitted by the Hon'ble Peshawar High Court Bannu Bench vide Judgment dated 30.11.2021 by allowing criminal appeal No.57-B/2019, hence the department re-instated/

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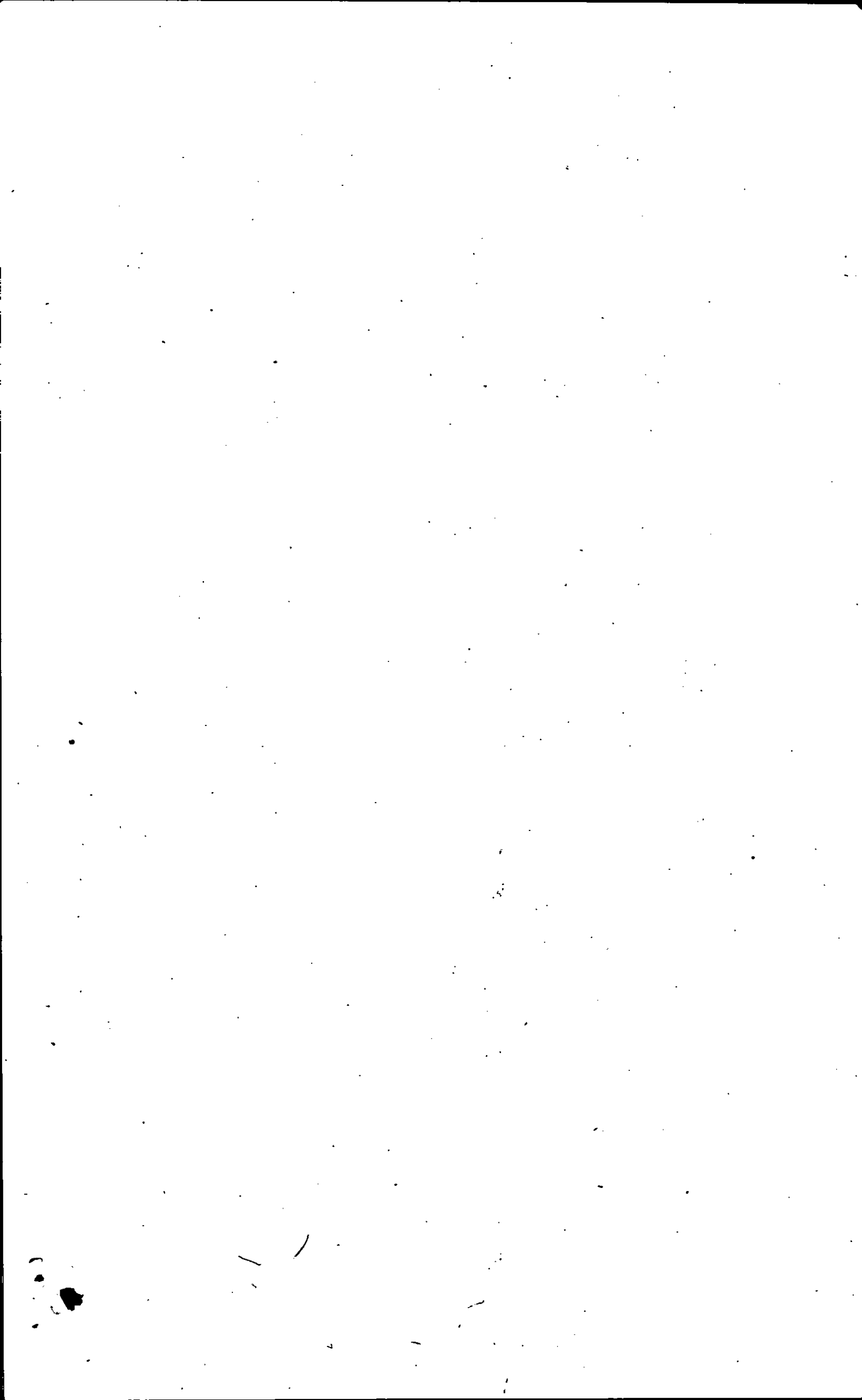
restored him in service in the light of above referred judgment vide Order dated: 24.01.2022.

5. That the appellant also applied for leave for a period of 365 days w.e.f 01.02.2017 as evident from his service book but no salary was paid to him w.e.f 01.02.2017 till 23.01.2022 due to his false implication in a baseless criminal case from which he has been acquitted by the Hon'ble Peshawar High Court Bannu Bench.
6. That the appellant has been re-instated/ restored in service vide order dated 24.01.2022 but without paying him a single penny w.e.f 01.02.2017 to 23.01.2022 for intervening period which has been calculated as 5 years and 23 days.
7. That the appellant is entitled to full pay, back benefits/ arrears of pay alongwith increments and promotion if due in the light of Fundamental Rule 54 and in the light of reported judgment "2021 SCMR 962" wherein it has been held that upon unconditional re-instatement in service the civil servant is entitled to full pay if he is not re-employed elsewhere in the intervening period.

It is pertinent to mention that the appellant since his involvement in a criminal case remained behind the bar and was acquitted vide judgment dated 30.11.2021 and re-instated/ restored unconditionally in service on 24.01.2022.

8. That it would be unjust to deprive a civil servant of back benefits for the intervening period he remained out of job without any fault on his part in the light of reported judgments 2011 TD Service 179 (D) Federal Service Tribunal. 2003 SCMR 291, 2013 SCMR 752.
9. That the August Supreme Court of Pakistan in a reported judgment 2013 SCMR Page 752 it was held, that back benefits includes salary,

*dyt*  
Attested to  
True Copy



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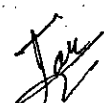
increments and promotion to which the civil servant is entitled upon his re-instatement.

10. That the appellant having 27 years unblemished service at his credit and always performed his duties to the entire satisfaction of his immediate superiors without any complaint, therefore, keeping in view his good track record he is legally speaking fully entitled to back benefits, arrears of pay, increments and promotion.

11. That the appellant having 3 boys and a girl all studying in their schools and he is the only source of income also make him entitle to grant of full back benefits including increments to look after his family.

Keeping in view what has been stated above, it is therefore, earnestly prayed to allow this departmental appeal and award back benefits/ arrears of pay/increments and promotion in the light of relevant rules and reported judgments of the August Supreme Court of Pakistan as referred in the body of this departmental appeal.

Any other relief to which the appellant found entitle and not specifically asked for may also be granted.



**Jangraiz Khan**  
Ward Orderly (BS-05)  
Office of Additional Hospital Director  
DHQ, Teaching Hospital (MTI) Bannu.

Dated: 17.09.2022

CC to:

1. Secretary Health, Khyber Pakhtunkhwa at civil Secretariat Peshawar.



**Attested to be  
True Copy**

47-a

39

**No. 1005** RGL94734391 For Insurance Rs. Ps.

Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

Received a registered addressed to Secretary Date Stamp 17 SEP 22

Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Office SO

Insured for Rs. (in figures) 100 (in words) one hundred

Insurance fee Rs. 10 Ps. 10 Weight 100 Kilo Grams

Name and address of sender

**No. 1006** RGL94734392 For Insurance Rs. Ps.

Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

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Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Office SO

Insured for Rs. (in figures) 100 (in words) one hundred

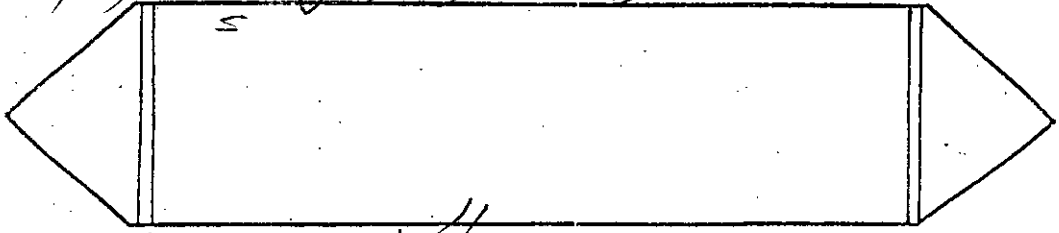
Insurance fee Rs. 10 Ps. 10 Weight 100 Kilo Grams

Name and address of sender

*dyti*

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# بعدالت سرکس ٹریبیونل شاد



جنید نریمان سے مخائب  
بنام سبیری سلو ونبرہ

بنام سبیری سلو ونبرہ

- موزخہ
- مقدمہ
- دعویٰ
- جرم

## باعث تحریر آنکے

پاکستان

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کاروائی متعلقہ  
 آن مقام شاد کیلئے جناب الہ خان مددگار  
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ  
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ نیا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانش التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا ادکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم \_\_\_\_\_ ماہ \_\_\_\_\_ 20

Handwritten signature and notes:  
 Attached  
 accepted by  
 Inayat Ullah  
 Ashour  
 ASL

03339059746 کے لئے منظور ہے۔

0333 9227736

LLM (UK)

مقام

55

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

**SERVICE APPEAL NO. 1792/2023**

**SCANNED  
KPST  
Peshawar  
18/8/23**

Jangraiz Khan.....Appellant

**Versus**

Government of Khyber Pakhtunkhwa & others .....**Respondents**

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3	Affidavit	-	4
4	Authority letter		5



Laeq Ahmad,  
Focal Person (Litigation)  
office of DGHS, Khyber  
Pakhtunkhwa, Peshawar

(56)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA**

Khyber Pakhtunkhwa  
Service Tribunal

**SERVICE TRIBUNAL PESHAWAR**

Diary No. 7090

**SERVICE APPEAL NO. 1792 OF 2022**

Dated 18/8/2023

Jangraiz Khan.....Appellant

**Versus**

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

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 & 02**

**Respectfully Sheweth:**

**Preliminary Objections:-**

1. That the appellant has got neither cause of action nor did 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.

**ON FACTS:**

1. Pertains to record.
2. Pertains to record.
3. Related to respondent No. 3.
4. Related to respondent No. 3.
5. Related to respondent No. 3.
6. Related to respondent No. 3.

7. Correct to the extent that the appellant has submitted departmental appeal for back benefits which was sent to the Hospital Director MTI DHQ Hospital Bannu for necessary action vide this Directorate letter dated 24/10/2022 (Annex-A).

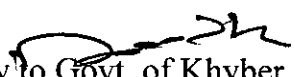
8. Incorrect. On his appeal action has already been taken as explained in preceding para.


**ON GROUNDS:**

- A. Related to respondent No. 3.
- B. Related to respondent No. 3.
- C. Related to respondent No. 3.
- D. Related to respondent No. 3.
- E. Related to respondent No. 3.

**PRAYER:**

It is therefore humbly prayed that on acceptance of the 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

  
 Director General Health Services Khyber  
 Pakhtunkhwa Peshawar  
 Respondent No. 02  
 DD (Admin)



(58) 3 Amma A 69

# DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUN KHWA PESHAWAR



E-Mail Address: [mvfdghs@yahoo.com](mailto:mvfdghs@yahoo.com) office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230  
No. 11441 / Personnel Dated: 24 / 10 / 2022

To

The Hospital Director  
MTI-DHQ Hospital Bannu.

Subject:  
Memo

**DEPARTMENTAL APPEAL**

Enclosed please find herewith a copy of an application alongwith its enclosures submitted by Mr. Jangraiz Khan Ward Orderly attached to MTI-DHQ Hospital Bannu which is self explanatory for further necessary action.

ADDITIONAL DG (HRM)  
DIRECTORATE GENERAL HEALTH  
SERVICES, K.P PESHAWA  
19/10/22

Attested

59

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

**SERVICE APPEAL NO. 1792/2023**

Jangraiz Khan.....Appellant

**Versus**

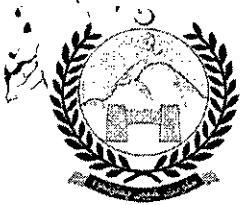
Government of Khyber Pakhtunkhwa & others .....Respondents.

**Affidavit**

I, Laeeq Ahmad, Focal Person (Litigation) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off / costs.

*Laeeq Ahmad*  
Deponent

ALLESIED  
Oath Commissioner  
18-8-23



60

**DIRECTORATE GENERAL HEALTH SERVICES**  
**KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services  
Peshawar and not to any official by name  
Office # 091-9210269 Fax # 091-9210230*

5

**AUTHORITY LETTER**

Mr. Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in case Service Appeal No. 1792/2023-titled Jangraiz Khan VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned.

**Director General Health Services**  
**Khyber Pakhtunkhwa, Peshawar.**

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Rep.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR**

Service Appeal No.1792/2022

SCANNED  
KPST  
Peshawar  
17/7/23

Jangraiz Khan

-----Appellant

VS

Secretary Health Department Government of Khyber Pakhtunkhwa &Others

-----Respondents

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Through

Respondent No. 03

*Additional  
Hospital Director  
AMTI Peshawar*

(ALI GOHAR DURRANI)

Advocate High Court

0332-9297427

[khaneliegohar@yahoo.com](mailto:khaneliegohar@yahoo.com)

Shah |Durrani | Khattak

(a registered law firm)

House No. 231-A, New Shami Road,  
Peshawar.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES

17/7/23

TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 6500

Dated 17/7/2023

Service Appeal No. 1792/2022

Jangraiz Khan

-----Appellant

VS

Secretary Health Department Government of Khyber Pakhtunkhwa & Others

-----Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT No 03.

Respectfully Sheweth:

Preliminary Objections:

- a) **Because** the Appellant is not an aggrieved person and has no locus standi to file the appeal in hand before this honorable tribunal.
- b) **Because** the instant appeal filed by the appellant is misconceived, not competent in its present form, is not maintainable, and is therefore liable to be dismissed forthwith. The appellant hasn't come with clean hands and has concealed material facts from this Honorable Court.
- c) **Because** the appeal of the appellant is badly time barred, and thus directly hit by the law of limitation and on that score alone the appeal is liable to be dismissed.
- d) **Because** the appellant, by concealing material and necessary facts from this Hon'ble Court, has come to seek justice when his own hands are unclean and tainted with the *malafide* of her own admitted conduct; and, the pleas of the petitioner should be rejected in their totality as a result.
- e) **Because** the appellant has acquiesced and is estopped by his own conduct to bring the instant appeal.
- f) **Because** the Appellant has got no cause of action to file the instant case.
- g) **Because** filing of this appeal is futile exercise and wastage of precious time of this Honorable Service Tribunal, liable to be dismissed forthwith.
- h) **Because** the instant appeal is barred by law and not maintainable.
- i) **Because** the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- j) **Because** this Hon'ble tribunal has no jurisdiction to adjudicate upon the matter.
- k) **Because** other grounds and objections may be raised with the permission of this Honorable Tribunal.

Para wise reply:

1. **Para 1** of the instant appeal pertains to record.

2. **Para 2** of the instant appeal is admitted correct. The Appellant was charged in a Case FIR dated 12-11-2017 due to which he was imprisoned and absent from duty for a period of about 5 years.
3. **Para 3** of the instant appeal is correct and hence, needs no reply.
4. **Para 4** of the instant appeal is correct and hence, needs no reply.
5. **Para 5** of the instant appeal is misconceived and hence, denied. There is no evidence or documentation indicating that the appellant is entitled to paid leave for the period of 365 days from 01-02-2017 according to the appellants service book. While the appellant's application for leave may have been approved, it does not automatically imply entitlement to salary during the said period. Absence from duty without proper justification, such as imprisonment, does not qualify for paid leave benefits as per the department's policies and regulations. However, it is important to note that no salary was paid to the appellant during this period due to his absence from duty, which was a direct result of his imprisonment.
6. **Para 6** of the instant appeal is correct to the extent that that the appellant has been reinstated/restored in service vide order dated 24-01-2022. However, it is important to clarify that the period from 01-02-2017 to 23-01-2022, during which the appellant was absent from duty, cannot be considered for the calculation of back benefits. The appellant's absence from duty was a consequence of his imprisonment, which was unrelated to his employment with the respondent's department.
7. **Para 7** of the instant appeal is incorrect, hence denied. That the matters relating to back benefits do not constitute a continuous cause of action, as claimed. The appellant's absence from duty due to his imprisonment, which was a personal matter unrelated to the department, does not warrant entitlement to back benefits. It is important to note that the principle of "no work, no pay" applies in this situation. Additionally, there are no reported judgments from Superior Courts indicating that the appellant is entitled to back benefits for the period of absence resulting from imprisonment. The absence from duty due to incarceration is not a valid basis for claiming back benefits, as it is an extraordinary circumstance beyond the control of the department.
8. **Para 8** of the instant appeal is incorrect. The Appellant is not an aggrieved person and has been treated well in accordance with the law. The Appellant bereft of any cause, legal grounds and standing before this Honourable Tribunal, the whole premise of the Appellant's case is based on contradictions and falsifications.

**GROUND:**

- a. **Ground A** is Incorrect as laid. The appellant claims entitlement to full pay, back benefits/arrears of pay, increments, and promotion based on Fundamental Rule 54 and a reported judgment of the Apex Court, "2021 SCMR 962." However, it deems clarification that the cited judgment does not apply to the appellants situation. The mentioned judgment pertains to a civil servant who remained unemployed during the period of dismissal and was

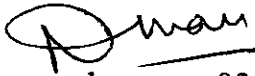
unconditionally reinstated without engaging in any other employment. In the appellant's case, his absence from duty was a result of his imprisonment, which is unrelated to the department. Therefore, the appellant cannot be considered entitled to full pay or back benefits for this period.

- b. **Ground B** is Incorrect as laid. The cited judgments do not establish a direct correlation to the appellant's case. The appellant's absence from duty was due to his imprisonment, which falls outside the scope of entitlement to back benefits as per departmental policies and regulations.
- c. **Ground C** is completely misconceived, hence denied. The mentioned judgment pertains to a different set of circumstances and does not directly apply to the appellant's case. The appellant's absence from duty due to imprisonment based on charges unrelated to the respondents does not warrant entitlement to back benefits as per the respondents' departmental policies. When the appellant was terminated due to his imprisonment, he cannot seek any back benefits since he was not serving in the department during that period.
- d. **Ground D** of the instant appeal is incorrect as laid. The appellant's 27 years of unblemished service and good track record cannot be used as a basis for claiming entitlement to back benefits, arrears of pay, increments, and promotion. It is important to reiterate that the appellant's absence from duty and termination was a direct result of his imprisonment. Absence from duty due to imprisonment cannot be considered grounds for granting back benefits, as per our departmental policies and regulations. Furthermore, the appellant cannot seek the claim of back benefits once he was terminated due to the charges levelled against him, even after his reinstatement the claim of back benefits during the period of termination does not lie since the reason behind the appellants termination was the direct result of his imprisonment which had nothing to do with the respondent department.
- e. **Ground E** of the instant appeal is incorrect as laid. The appellant's absence from duty was a consequence of his imprisonment, which is unrelated to the respondents. The answering respondent cannot be held responsible for the appellant's personal situation and financial obligations.

It is therefore most humbly prayed that the instant appeal is meritless, may please be dismissed with cost.

Date: \_\_\_/\_\_\_/2023

THROUGH

  
 Respondent no. 03  
 Additional  
 Hospital Director  
 (AMTI) Bannu  
 (ALI GOHAR DURRANI)  
 Advocate High Court  
 0332-9297427  
 khaneliegohar@yahoo.com  
 Shah | Durrani | Khattak  
 (a registered law firm)  
 House No. 231-A, New Shami Road,  
 Peshawar.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 1792/2022

Jangraiz Khan

-----Appellant

VS

Secretary Health Department Government of Khyber Pakhtunkhwa & Others

-----Respondents

**AFFIDAVIT**

I, Mr. Ihsanullah Khan, Litigation Officer/Pharmacist (BPS-17), Khalifa Gul Nawaz MTI, Bannu, do hereby solemnly affirm and declare on oath that the contents of the accompanying parawise comments are true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal, that the answering respondent has neither been placed ex-parte nor this defense has been struck off. *Ihsanullah Khan* (Deponent)

*Ihsanullah Khan*

Identified by *Ali Gohar Durani*  
*Advocate*



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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR**

Service Appeal No. 1792/2022

Jangraiz Khan

-----Appellant

VS

Secretary Health Department Government of Khyber Pakhtunkhwa & Others

-----Respondents

**Authority Letter**

Mr. Ihsanullah Khan Pharmacist/Litigation officer (BPS-17)KGN-MTI Bannu is hereby authorized to submit Parawise comments in my behalf in Service Appeal No.1792/2022 titled "Jangraiz Khan Vs Secretary Health Department Govt of kpk & others" in Khyber Pakhtunkhwa Service Tribunal Peshawar.

*Rman*

Additional Hospital Director

DHQ-MTI Bannu

(Respondent no.3)

***Additional  
Hospital Director  
(MTI) Bannu***

(6) (54)

**POWER OF ATTORNEY**

**BEFORE**

Service appeal No. 1792 of 2022

*Jangriz Khan*

(Petitioner)  
(Plaintiff)  
(Appellant)  
(Complainant)  
(Decree-Holder)

VERSUS

*Govt of KPK &  
Others*

(Respondent)  
(Defendant)  
(Accused)  
(Judgment-Debtor)

I/we Respond Respondent No.3 the above named Accused/Petitioner/Plaintiff/Appellant/Respondents/Defendant do hereby appoint

& constitute **ALI GOHAR DURRANI, ADVOCATE HIGH COURT(s), of the Law Firm "Shah | Durrani | Khattak"** as counsel (for R-3) in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file *Plaint/Written Statement* or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

**AND HEREBY AGREE:-**

- a) To ratify whatever the said Advocate may do in the proceedings in my interest
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

*Dinan*

Signature of Executant(s)  
*Additional*  
**Hospital Director**  
**(MTI) Bannu**

Accepted subject to term regarding payment of fee.

*[Signature]*

**ALI GOHAR DURRANI (BC-13-4247)**  
Advocate High Court  
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