


Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 1104/2024

S.No.	Date of order. Proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.09.2024	<p>The application for restoration of Service appeal No. 5758/2020 submitted today by Mr. Pir Hamid Ali Shah Advocate. It is fixed for hearing before Division Bench at Peshawar on 30:09.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the applicant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

C.M No. _____/2024 in Service Appeal No.5758/2020

Hidayat Ullah Khan

.....Appellant

VERSUS

The Director General Health, Directorate Health
Services and others

.....Respondents

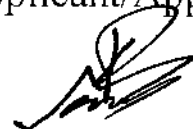
**APPLICATION FOR FIXATION OF TITLED APPEAL BEFORE
THE PRINCIPAL BEAT AT PESHAWAR**

Respectfully Sheweth:

1. That the applicant/appellant has fled the instant service appeal in which no date is yet fixed so far.
2. That case of the applicant/appellant is urgent in nature and therefore be fixed before the principal seat at Peshawar
3. That the counsel for the applicant/appellant is doing practice at Peshawar as well as the addresses of the main respondents ie. Director (E&SE) are also at Peshawar and the appellant also wants to pursue his case at the principal seat at Peshawar.
4. That it will be convenient for the counsel as well as for the applicant/appellant to fix the instant service appeal principal seat at Peshawar.

It is therefore most humbly prayed that on the acceptance of this application, the instant service appeal may kindly be fixed at principal seat at Peshawar

Applicant/Appellant
Through


Naimat Ullah
&

Pir Hamid Ali Shah
Advocates, High Court
Peshawar

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

R.A
~~RA~~ No. 1104 /2024 in Service Appeal No. 5785/2020

Hidayat Ullah Khan

VS


Government of Khyber Pakhtunkhwa & others

INDEX

S. No.	Description of Documents	Annexure	Pages
1	Grounds of restoration application alongwith affidavit		1-4
2	Copy of Service Appeal of the Appellant/Applicant	A	5-10
3	Copies of order sheets	B & C	11-12
4	Copy of order dated 11/09/2024	D	13
5	Wakalatnama		14


APPELLANT/APPLICANT

THROUGH


PIR HAMID ULLAH SHAH
ADVOCATE SUPREME COURT

Dated: 25/09/2024

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

R.A
C.M No. 1104 /2024 in Service Appeal No. 5785/2020

Khyber Pakhtunkhwa
Service Tribunal

Date: 16-03-2024

Date: 25-09-2024

Hidayat Ullah Khan S/O Mir Faraz Khan

R/O House No. 233/B, Mohallah Rab Nawaz Wakeel, Bannu City.

VS

1. Director General Health, Directorate of Health Services, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary Health, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.

**SUBJECT: APPLICATION FOR RESTORATION OF THE ABOVE
TITLED SERVICE APPEAL.**

Respectfully Sheweth;

- 1) That the Appellant has filed the above titled Appeal before this Honourable Tribunal for his promotion.

(Copy of Appeal is hereby annexed as Annexure-A)

- 2) That on 19/02/2024 date was fixed at the Camp Court Bannu, as the case pertains to Bannu and fixed for 17/04/2024.

(Copies of order sheets are hereby annexed as Annexure-B)

- 3) That after transfer of case from Peshawar to Bannu, the Appellant engaged another Counsel from Bannu.

- 4) That the case was fixed for 22/05/2024 before this Honourable Tribunal at Camp Court Bannu. The Appellant appeared in Camp Court at Bannu on the date fixed, but he was told that the date of the case changed to 11 September 2024 due to cancellation of tour.

**(Copy of order sheet dated 22/05/2024 is hereby annexed as
Annexure-C)**

- 5) That on 11/09/2024 the Appellant attended the Camp Court at Bannu, but the Honourable Bench was not available at Bannu. The Appellant asked about his case in this Honourable Tribunal and he was informed that his case has been dismissed in default.

(Copy of order dated 11/09/2024 is hereby annexed as Annexure-D)

- 6) That the Applicant submits the instant application on the following grounds inter alia.

GROUND:

- A) That the Applicant/Appellant pursuing his case since 2020, and attended this Honourable Tribunal for long 04 years and the absence of Applicant/Appellant is due to misconception.
- B) That the case was fixed for 21/08/2024, but before the ibid date on 13/08/2024 this Honourable Tribunal passed an order and requisitioned the file from Bannu to Peshawar in order to accelerate the case being old one and fixed for 11/09/2024 without any notice to the Appellant.
- C) That on 13/08/2024 this Honourable Tribunal had given reason for requisition file from Bannu to Peshawar that the case is old one, but due to this order the case was delayed. Because the case was fixed for 21/08/2024 but the Honourable Tribunal adjourned to 11/09/2024 on the ground to accelerate which do not appeal to prudent mind.
- D) That it is well known principle that no one should be prejudice because of an act of a Court. In the instant case the Appellant have been condemned unheard and without any summon and notice the date of the case changed prior to the date fixed by this Honourable Tribunal, and that too at Peshawar.



- E) That the Appellant/Applicant has a good case on merit and is hopeful to be succeeded.
- F) That the Appellant/Applicant wants to get the case decided on merits and not on technical grounds as valuable rights of the Applicant is involved in the case.

Hence, it is very humbly prayed that the above titled Service Appeal may kindly be restored and may very graciously be decided on merits.



APPELLANT/APPLICANT


THROUGH



PIR HAMID ULLAH SHAH

ADVOCATE SUPREME COURT

Dated: 25/09/2024



Naimat Ullah
Adv. High Court, Baruch.

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

C.M No. _____/2024 in Service Appeal No. 5785/2020

Hidayat Ullah Khan

VS

Government of Khyber Pakhtunkhwa & others

AFFIDAVIT

I, Hidayat Ullah Khan Son of Mir Faraz Khan R/O Mohallah Rabnawaz
Wakil Bannu City, Do hereby solemnly affirm and declare that the contents
of this Civil Miscellaneous application are true and correct to the best of
my knowledge, belief and nothing has been concealed from this
Honourable Tribunal.



DEPONENT

1101-1474433-5

25 SEP 2024

ATTESTED



Page - 5

Annex - "A"

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA



Service Appeal No. 5785 of 2020

Hidayat Ullah Khan S/o Mir Faraz Khan

R/o House No. 233/B, Mohallah Rab Nawaz Wakeel, Bannu City.

Appellant

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5062

Dated 16/6/2020

1. Director General Health, Directorate of Health Services,
Khyber Pakhtunkhwa, Civil secretariat, Peshawar.

2. Secretary Health, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

3. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar.

Respondents

SERVICE APPEAL UNDER SECTION 04 OF KHYBER

PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974

AGAINST THE ILLEGAL ACT OF RESPONDENT NO.

01 FOR NOT PROMOTING THE APPELLANT TO THE

POST OF CLINICAL TECHNOLOGIST (PATHOLOGY)

BPS-17 FROM HIS CURRENT POST AGAINST WHICH

HE SUBMITTED DEPARTMENTAL APPEAL ON

28.01.2020 THROUGH PROPER CHANNEL WHICH

WAS FILED AND NOT ANSWERED.

Respectfully Sheweth:

1. That appellant was appointed as Junior Clinical Technician (Pathology) (BPS-09) by respondent No. 01 vide

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

office/appointment order dated: 04.04.2011 and is currently serving in Bannu Medical College, Bannu as Clinical Technician (Pathology) (BPS-12).

(Copy of appointment order dated: 04.04.2011 is attached as Annexure "A").

2. That the appellant has an outstanding educational record with a Bronze Medal (3rd position) in B.SC MLT (Pathology) from National Institute of Health, Islamabad.

(Copy of Certificate of Honour is attached as Annexure "B").

3. That there is a threefold criterion for promotion of Paramedical Staff in the Health Department, published vide notification dated: 10.05.2016 which is explained herein below:

i. **40% Initial Recruitment** through Khyber Pakhtunkhwa Public Service Commission.

ii. **40% by promotion through Seniority cum fitness** from amongst Chief Technicians and Chief PHC Technicians (BPS-16).

(iii) **20% through seniority on date of acquiring degree eligible for BPS-17** posts amongst in service BPS-12, BPS-14 & BPS-16 Technicians.

(Copy of method of recruitment, qualification and other conditions published vide notification dated: 10.05.2016 is attached as Annexure "C").

4. That 23 Paramedics were promoted to BPS-17 in 20% Criteria through Health Department Notification No. SOH-III/8-60/2018 dated: 01.02.2018, except Pathology Cadre.

(Copy of the Notification No. SOH-III/8-60/2018 dated: 01.02.2018 is attached as Annexure "D").

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(3)

5. That there were two vacant posts of Clinical Technologists (Pathology) BPS-17 in Health Department on 01.02.2018, which were to be filled by the 20% criteria, which is seniority cum fitness from amongst the Chief Technicians, Senior Technicians and Technicians as aforementioned.

(Copy of letter dated: 14.05.2019 to RTI, showing vacancy of posts by Directorate General Health Service is attached as Annexure "E").

6. That to fulfill the vacancies in Paramedical staff, in 20% Criteria, seniority lists of Qualified Degree Holder Paramedics, were made, whereby appellant was at serial No. 02 of the seniority list of Qualified Paramedics Pathology. The appellant is still on serial No.2 of the Seniority list prepared on 23.05.2019.

(Copy of Seniority list dated 24.10.2019 showing seniority as on 23.05.2019 is attached as Annexure "F").

7. That the herein before mentioned vacancy and seniority lists were not complied with and delayed till date due to conflict between Degree Holders in Microbiology and Medical Laboratory Technology (MLT)/Pathology, which has nothing to do whatsoever with Pathology, which was not disputed.

8. That appellant finally submitted Department Appeal on 28.01.2020 for his Promotion from the date the vacancy was lying vacant/ Back Date, which was sent through proper channel i.e. through Dean Bannu Medical College, Bannu on 29.01.2020, but was not answered hence filed.

(Copies of Departmental Appeal dated: 28.01.2020 and covering letter of Dean, BMCB dated: 29.01.2020 are attached as Annexures "G" & "G-1").

9. That a similar appeal was made by Fazal Manan, the candidate who is on serial No. 01 in the Seniority List of Qualified Paramedics Pathology, was answered by respondent No.01 stating

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

that "The case of promotion of Degree Holders (Pathology) was not processed on 01.01.2018 due to conflict between Degree Holders in Micro Biology and Medical Laboratory Technology" which has no concern with Pathology yet affecting the valuable right of appellant.

(Copy of Reply to Fazal Manan dated: 01.03.2019 is attached as Annexure "H").

10. That 40 percent criteria through initial recruitment is complied with by the respondents.

(Copy of advertisement dated: 18.02.2019 is attached as annexure "I").

11. That 40% criteria through promotion on basis of seniority cum fitness have also been processed and complied with, whereas 56 Paramedics, including those of pathology are promoted vide notification dated 21.07.2017.

(Copy of notification of promotion of paramedics on 40% Seniority cum Fitness criteria dated 21.07.2017 is attached as Annexure "J").

12. That two of the mentioned criteria in the rules/method laid down for the promotion/ appointment of Paramedics to BPS-17 have been executed, however, the 20% criteria in Pathology Cadre is not being processed, which makes the seniority of appellant suffer in the Joint seniority list of BPS-17, all due to nefarious designs and high handedness of respondent No.01.

13. That respondent No.01 had not made any objection to "Asif Mehmood" Clinical Technologist (Pathology) BPS-17, at S. No. 55 in the Joint Seniority List of Paramedics in BPS-17 who was regularized on 11.04.2017, and "Irfan Ullah Khan", who has been recently appointed as Lab Technologist or Clinical Technologist (Pathology) BPS-17, vide notification dated 03.01.2020, even though Asif Mehmood has irrelevant Degree in

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


B.S. (H) Microbiology and Degree of Mr. Irfan Ullah Khan is absolutely irrelevant.

(Copies of Seniority List of BPS-17, showing the position of Asif Mehmood and appointment Notification of Irfan Ullah Khan dated: 03.01.2020 are attached as Annexures "K" & "K-1").

14. That the appellant is still at Serial No.02 of seniority list of Qualified Degree Holder Paramedics Pathology which is undisputed and final, yet he is not being promoted nor given back benefits, which makes his seniority suffer in further promotion.
15. That the 20% criteria for promotion on basis of date of acquiring qualification for Clinical Technologists (Pathology) BPS-17 is not being processed not complied with.
16. That the appellant is not being treated in accordance with law and rules/ method for promotion as laid down by the government and is being discriminated against.
17. That the appellant feeling aggrieved of his non-promotion and continuous cause of action of suffering seniority, kneels before this Hon'ble Court for grant of justice.
18. That there is no other and efficacious remedy than to approach this Hon'ble Court through this appeal.

It is therefore respectfully prayed, that this Hon'ble Court may graciously:

- i. **Declare** the appellant eligible for promotion with all back benefits from the date the post of Clinical Technologist, Pathology (BPS-17) were lying vacant and he was ignored while similarly placed employees were promoted vide order dated: 01.02.2018 ignoring the 20% quota for the cadre of pathology.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(4)


- ii. **Declare** the non-promotion of appellant as illegal, discriminatory, outcome of cherry picking, against the reserved quota for Qualified Degree Paramedics i.e. 20% and against the constitutional rights of the appellant.
- iii. **Direct** the respondents to promote appellant with all back benefits from the date the post of Clinical Technologist, Pathology (BPS-17) were lying vacant as per the quota mentioned in "Method of recruitment, qualification and other conditions published vide notification dated 10.05.2016" without any interference and hurdles, in the best interest of justice.
- iv. Any other order deemed appropriate in the circumstances may also be passed. Any other document / argument will be raised at the time of the hearing with the permission of this Honourable Court.


Certified true copy
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar


 Appellant

Through


 Saifullah Muhib Kakakhel
 Advocate High Court (LL.M)
 Cell: 0334-4440744


 Mehwish Muhib Kakakhel
 Advocate High Court
 BSCS, LL.M (Cyber Crimes)


 Zeenat Muhib Kakakhel
 Advocate High Court.


 Kainat Muhib Kakakhel
 Advocate Peshawar.

Dated: 16/06/2020

25-09-2024

Date of Presentation of Application	6-P
Number of Words	30/-
Stamping Fee	51/-
Stamp	35/-
Date of Copy	25-09-2024
Date of Delivery of Copy	25-09-2024



S.A No. 5785/2020

16.11.2023

Junior of learned counsel for the appellant present.

Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 19.02.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

Naeem Amin

- 19th Feb. 2024
1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
 2. Former made a request for adjournment in order to prepare the brief. Adjourned. This case pertains to Camp Court, Bannu, therefore, let it be fixed for arguments on 17.04.2024 before D.B at Camp Court, Bannu. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

Due to cancellation of four case
is adjourned to 22.5.2024

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



22.05.2024

01. Nemo for the appellant. Mr. Asif Masood Ali Shah, District Attorney for the respondents present. Previous date was adjourned through Note Reader, therefore, case is adjourned to 21.08.2024 for arguments before the D.B at camp court, Bannu. P.P given to the learned DDA.

RECEIVED
22.05.2024

(Farzana Paul)
Member(I)
Camp Court, Bannu.

(Rashida Bano)
Member(J)
Camp Court Bannu.

Fazle Subhan, P.S

13.08.2024

This case was fixed for 21.08.2024 for arguments, as the

concerned for the appellant was informed telephonically on 13-8-24 at 2:15 on 3344449812

appeal pertains to the year 2020 and it is old one, therefore, the appeal file was requisitioned, and office is directed to accelerate and fix it for arguments on 11-09-24 before the D.B. Parties

at Peshawar

be informed accordingly.

(Rashida Bano)
Member (J)

ATTESTED

EXAMINER
Kyber Pakhtunkhwa
Service Tribunal
Peshawar



Service Appeal No. 5785/2020 titled "Hidayat Ullah Khan Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others"


ORDER


11.09.2024 **Kalim Arshad Khan, Chairman:** Nemo for the appellant. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant was informed telephonically regarding fixation of the case. Today case was called several times till last hours of the court but nobody turned up on behalf of the appellant. Therefore, the instant appeal is dismissed in default. Consign.

3. Pronounced in open court at Peshawar given under our hands and seal of the Tribunal on this 11th day of September, 2024.


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Kaleemullah

Date of Presentation of Application	25-09-2024
Number of Words	3-p
Copying Fee	15/-
Agent	5/-
	20/-
Time of Copy	
Date of Copy	25-09-2024
Date of Delivery of Copy	25-09-2024

POWER OF ATTORNEY
BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Hidayat Ullah Khan

Versus

Government of KP & Others

Plaintiff
Appellant
Petitioner

Complainant
Decree Holder

Defendant
Respondent

Accused
Judgment Debtor

I the Appellant, do hereby appoint and Constitute,
Mr. PIR HAMID ULLAH SHAH ADVOCATE SUPREME COURT in the
above mentioned case, to do any of the following, acts, deeds and things.

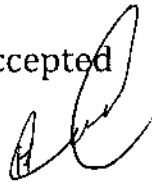
1. To appear, act, and plead for me/us in the above mentioned case in this court /tribunal or any other court/tribunal in which the same may be tried or heard and other proceedings arising out of or connected therewith.
2. To assign, verify and file or withdraw all proceedings, petitions, appeals, affidavit, and the applications for compromise or withdrawal, or for and submission to arbitration of the same case, or any other documents, as per may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stage.
3. To receive payment of, and issue receipt for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.
4. To all other acts and things, 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.
- B. Not to hold the advocate responsible if the said case be preceded ex- "parte or dismissed in default in consequence of their absence from the court/tribunal when it is called for hearing.
- C. That advocate shall be entitled to withdraw from the Prosecution of the case if the whole of any part of the agreed fees remains unpaid.

In witness whereof I /we have signed this power of attorney /read explained, to me/us and fully understood by me/us this 23rd day of September 2024

Attested/Accepted



Signature of Executants

1101-1474433-5

Mobile: 0333 9244119

PIR HAMID ULLAH SHAH
ADVOCATE SUPREME COURT
CNIC # 11101-1471266-7
BC 09-0548
CELL: 0333-9720665

50

57636

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: لمر انز کلک

بار کونسل ایسوسی ایشن نمبر: 4009-12-12

رابطہ نمبر: 03119637776



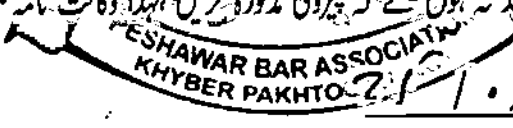
بعدالت جناب: خیبر پختونخواہ ہائی کورٹ، پشاور

Petitioner: <u>جناب:</u>	دعویٰ: <u>CM.No. 5785/20</u>
<u>لدا بہت اللہ خان</u>	علت نمبر: _____
<u>بنام</u>	مورخہ: <u>25-09-2024</u>
<u>D.G, Health Services</u>	جرم: _____
<u>KPK</u>	تھانہ: _____

بابت تحریر آتکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام سندھ کیلئے لمر انز کلک کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کالہ اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے اسمائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ پر راجحہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخی پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 109/2024



المقام سررسٹریٹ سول لائنز واہ شد العبد
 کے لیے منظور ہے۔

لمر انز کلک
Dec 11

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

المقام سررسٹریٹ سول لائنز واہ شد العبد