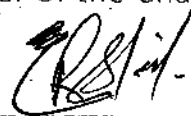


Form-A

FORM OF ORDER SHEET

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

**Restoration Application No. 1076/2024**

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.09.2024	<p>The application for restoration of service appeal No. 5785/2020 submitted today by Mr. Saif ullah Mohib Kakakhel Advocate. It is fixed for hearing before Division Bench at Peshawar on 30.09.2024. Original file be requisitioned, Parcha Peshi given to counsel for the applicant.</p> <p>By order of the Chairman  REGISTRAR</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 5785/2020

RA No. 1076/24  
Hidayat Ullah Khan

...Applicant

**VERSUS**

Director General Health & Others

...Respondents

**APPLICATION FOR FIXATION THE ABOVE  
TITLED RESTORATION AT PRINCIPAL  
SEAT KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR.**

Respectfully Sheweth;

The applicant submits as under:-

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 15864

Dated 19-09-2024

1. That the above mentioned case is pending adjudication before this Hon'ble Tribunal in which no date of hearing has been fixed so far.
2. That it is worth mentioning that the offices of all the respondent concerned are at Peshawar. It is also convenient to the appellant /applicant meaning thereby that principle seat would be convenient to the parties concerned.
3. That according to Rule-5, of the Khyber Pakhtunkhwa Service Tribunal Rules 1974 a tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.


4. That any ground will be raised at the time of arguments with the permission of this Hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of this application, the restoration may please be accepted at principle seat Peshawar for the convenience of parties are best interest of justice

Dated: 19.09.2024

  
Applicant

Through

  
Saif Ullah Mohib Kakakhel  
Advocate, Supreme Court  
of Pakistan

### AFFIDAVIT

I, **The Applicant**, do hereby solemnly affirm & declare that all content of the instant Petition, are true & correct to the best of my knowledge & belief and nothing has been concealed from this Hon'ble Tribunal.

  
DEPONENT

**BEFORE THE LEARNED SERVICE TRIBUNAL, KHYBER PAKHTUNKHUWA,**

**PESHAWAR**

**RA No 1076/24**

In Re:  
Service Appeal No. 5785/2020

Hidayat Ullah Khan

.....Appellant


**Versus**

Director General Health & Others

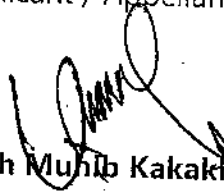
..... Respondents

**INDEX**

<u>Sr.No.</u>	<u>Description of Documents</u>	<u>Annex</u>	<u>Pages</u>
<u>1.</u>	Application for Restoration alongwith affidavit		1-2
<u>2.</u>	Copies of the appeal & order dated 11.09.2024	<u>A &amp; B</u>	3-11

  
Applicant / Appellant

Through:

  
Saifullah Munib Kakaknel  
Advocate Supreme Court  
Cell # 0334-4440744

Dated: \_\_\_/09/2024

①

**BEFORE THE LEARNED SERVICE TRIBUNAL, KHYBER PAKHTUNKHUWA,**  
**PESHAWAR**

In Re:  
Service Appeal No. 5785/2020

Hidayat Ullah Khan S/o Mir Faraz Khan R/o House No. 223/B, Mohallah Rab Nawaz  
Wakeel, Bannu City

.....Appellant

**VERSUS**

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

**APPLICATION FOR AND ON BEHALF OF APPLICANT/  
APPELLANT FOR RESTORATION OF THE APPEAL DISMISSED  
IN DEFAULT VIDE ORDER DATED 11.09.2024.**

**Respectfully Sheweth:**

1. That the above titled appeal was fixed before this Hon'ble Tribunal and was dismissed in default vide order dated 11.09.2024. (Copies of the appeal & order dated 11.09.2024 are attached as Annexure A & B).
2. That the undersigned was not in knowledge of the date fixed as the said service appeal was firstly transferred from Peshawar to bannu bench and later on at got re-transferred from bannu bench to principle bench.
3. That the non appearance of the counsel and appellant before this Hon'ble tribunal was neither intentional nor deliberate but due to the above mentioned reason.
4. That the restoration application filed is within time and there is no legal impediment in accepting the instant application and restoring the case to its original number.

*It is therefore respectfully submitted, that on acceptance of this application, the relief as prayed for in the heading of application may please be granted in favour of the applicant / appellant in the best interest of justice.*

(2)

Any other order deemed appropriate in the circumstances of the case may also be passed. The applicants / appellants may be allowed to put forward any other argument/document at the time of hearing of this application.

Applicant / Appellant

Through:

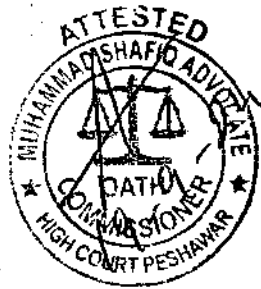
Saifullah Muhib Kakakhel  
Advocate Supreme Court  
Cell # 0334-4440744

Dated: 19/09/2024

**AFFIDAVIT**

I, Hidayat Ullah khan S/o Mir Faraz Khan R/o House No.223/B, Mohallah Rab Nawaz Wakeel, Bannu City, do hereby solemnly affirm and declare on oath that the contents of accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

DEPONENT





PA  
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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. 50621

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.

Filed to-day

Registrar

16/6/2020

Respectfully Sheweth:

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

ATTESTED  
16/6/2020  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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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 (3<sup>rd</sup> 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.

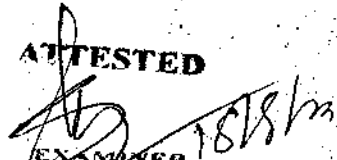
ii. 40% by promotion through Seniority cum fitness from amongst Chief Technicians and Chief PHC Technicians (BPS-16).

(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").*

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal



- 5
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, BMBM dated: 29.01.2020 are attached as Annexures "G" & "G-1").*

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  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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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  
Muhammad Akbar Khan  
Services Division  
Behawalpur

(7)

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


  
Member Pathology  
Government Hospital


(8)

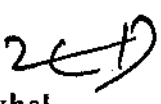
- ii. Declare the non-promotion of appellant as illegal, discriminatory, outcome of cherry picking, against the reserved quota for Qualified Degree Paramedics i.e. 20% and against the constitutional rights of the appellant.
- iii. Direct the respondents to promote appellant with all back benefits from 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.

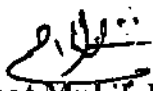
  
Appellant

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

ATTESTED  
  
EXAMINER  
Cyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA.

Service Appeal No. \_\_\_\_\_ of 2020

Hidayat Ullah Khan

.....Appellant

**VERSUS**

D.G Health, Directorate of Health Services Khyber Pakhtunkhwa & Others.

..... Respondents

**AFFIDAVIT**

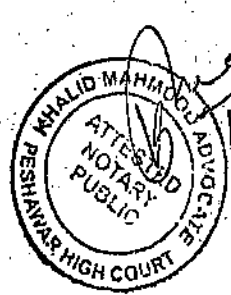
I, Hidayat Ullah Khan S/o Mir Faraz Khan R/o House No. 233/B, Mohallah Rab Nawaz Wakeel, Bannu City, do hereby solemnly affirm and declare on oath that the contents of accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Identified by:

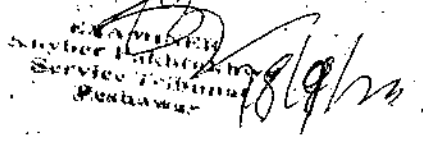


Saifullah Muhib Kakakhel  
Advocate High Court (LL.M)

**DEPONENT**  
CNIC# 11101-1474433-5  
Cell # 0333-9244119



**ATTESTED**



Member  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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

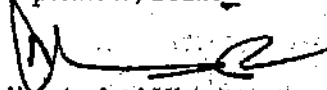
**ORDER**

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

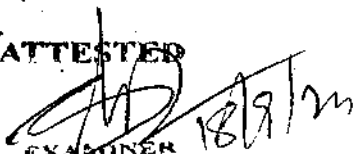
2. Learned counsel for the appellant was informed telephonically regarding fixation of the case. Today case was called several times till last hours of the court but nobody turned up on behalf of the appellant. Therefore, the instant appeal is dismissed in default. Consign.

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

  
(Rashida Bano)  
Member (J)




  
(Kalim Arshad Khan)  
Chairman

Kaleemullah

**ATTESTED**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application: 18/9/24  
Number of Words: Pages = 2  
Copying Fee: 10/-  
Urgent: 5/-  
Total: 15/-  
Name of Copyist: Shahzad  
Date of Completion: 18/9/24  
Date of Delivery: 18/9/24

11

48605	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
Saifullah Muhib Kakakhel ASC ایڈوکیٹ	PESHAWAR BAR ASSOCIATION
بار کونسل ایسوسی ایشن نمبر: 13-4175	
رابطہ نمبر: 0334-4440744	
	

عدالت جناب: Learned Service Tribunal, Khyber Pakhtunkhwa

مخانب: Appellant/Applicant	دعوی:
Hidayatullah Khan	علت نمبر:
بنام	مورخہ:
DG Health KP & others	جرم:
	تھانہ:

**بامث تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے **سیف اللہ صاحب** صاحب کلاٹ کے نام سے درخواست کی گئی ہے کہ اس کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز ویل صاحب کو نمینٹ راضی نامہ کرنے و تقریر نمائندگی و فیصلہ برحلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق علی شہادہ خطوں زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری ٹیک طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز **ضرطان** دائر کرنے اپیل گزارائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے **سیف اللہ صاحب** کو کل یا مختار نمائندگی کیلئے اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب سے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا **ضرطان** ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 1/20

\_\_\_\_\_ مقام \_\_\_\_\_

\_\_\_\_\_ کے لئے منظور ہے۔

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

*(Handwritten signatures and stamps)*