



## KHYBER PAKHTUNKHWA

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

### NOTIFICATION

Peshawar Dated, the 4<sup>th</sup> September, 2020.

NO. SOH(MTI)/HD/1-1/MTI/2020:- In exercise of the powers conferred by Section 23 of the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms (Amended) Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015) read with section 16A of Khyber Pakhtunkhwa Medical Teaching Institutions (Amendment) Act, 2020 thereof, the Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

#### THE KHYBER PAKHTUNKHWA MEDICAL TEACHING INSTITUTIONS APPELLATE TRIBUNAL RULES, 2020.

#### PART-I

#### PRELIMINARY

1. **Short title and commencement.**—(1) These rules may be called the Khyber Pakhtunkhwa Medical Teaching Institutions Appellate Tribunal Rules, 2020.

(2) They shall come into force at once.

(3) They shall apply to the Medical Teaching Institutions in the Province of Khyber Pakhtunkhwa.

2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

(a) “Act” means the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015);

(b) “appellant” means a person who prefers an appeal under these rules before the Appellate Tribunal;

(c) “authorized representative” means a person or advocate duly authorized to represent a claimant and/or respondent before the Appellate Tribunal;

(2) The Search and Scrutiny Committee shall consist of the following, namely:

- |     |   |                      |
|-----|---|----------------------|
| (a) | Minister for Health, Government of Khyber Pakhtunkhwa;            | Chairman             |
| (b) | Advocate General, Khyber Pakhtunkhwa; and                         | Member               |
| (c) | Secretary to Government of Khyber Pakhtunkhwa, Health Department. | Member-cum-Secretary |

(3) The Search and Scrutiny Committee shall from amongst the shortlisted candidates placed by the Department under sub-rule (3) of rule 5, recommend to the Government at least three persons for the position of Chairman and at least twelve persons for the position of members of the Appellate Tribunal to be appointed by the Government.

(4) The Government shall from amongst the names proposed by the Search and Scrutiny Committee, appoint a Chairman and four members of the Appellate Tribunal.

**5. Procedure for the appointment of Chairman and members of the Appellate Tribunal.—**

(1) Application from the eligible/interested candidates shall be invited by the Department through advertisement in two leading daily news papers for selection of Chairman and members of the Appellate Tribunal.

(2) The Department shall scrutinize the applications received in response to the advertisement and shortlist the candidates.

(3) After short listing the candidates under sub-rule (2), the Department shall place the shortlisted candidates before the Search and Scrutiny Committee.

**6. Tenure of office.—**(1) The Chairman and members of the Appellate Tribunal shall hold office for a term of three years or till attaining the age of sixty five years whichever is earlier.

(2) Government may extend the term of office of the Chairman or members of the Appellate Tribunal for another term or till attaining the age of sixty five years whichever is earlier.

**7. Resignation.—** The Chairman or a member of the Appellate Tribunal may resign from his office on one month prior notice to Government.

**8. Removal of Chairman and members.—**(1) Government may remove the Chairman or any member of the Appellate Tribunal from his office, if he-

- is convicted of any offence involving moral turpitude; or
- is inefficient; or
- is guilty of gross misconduct; or
- is guilty of corruption; or
- has physical or mental incapacity which renders him incapable of performing his duties.

(2) The Chairman or a member of the Appellate Tribunal shall not be removed from his office unless he has been given an opportunity of being heard.

9. **Perks and privileges.**---The Chairman and members of the Appellate Tribunal shall be entitled to such perks and privileges as determined by Government from time to time.

10. **Appointment of Registrar.**---The Registrar of the Appellate Tribunal shall be appointed from amongst the Officers of Provincial Management Service or Judicial Service in BPS-18:

Provided that the appointment of Registrar from Judicial Service shall be made in consultation with the Chief Justice of the Peshawar High Court, Peshawar.

11. **Functions of the Registrar.**---(1) The Registrar of the Appellate Tribunal shall discharge his functions under these rules and shall perform such other functions as are assigned to him by order in writing from the Chairman. The Registrar shall have custody of the record and the appeals being heard or decided by the Appellate Tribunal.

(2) The official seal of the Appellate Tribunal shall be kept in the custody of Registrar.

(3) In addition to the aforementioned functions and duties, the Registrar shall also perform the following functions and duties, namely:

- (a) receive all appeals, replies and other documents;
- (b) require any appeal or reply to be presented to the Appellate Tribunal to be amended in accordance with these rules or the Act;
- (c) subject to the directions of Appellate Tribunal, fix date of hearing of the appeals or other proceedings and issue notices thereof;
- (d) grant copies of the documents or proceedings to the parties;
- (e) grant leave to inspect the record of the Appellate Tribunal in a particular appeal;
- (f) dispose of all matters relating to the service of the notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the news papers;
- (g) requisition record from the custody of any adjudicating officer or authority;
- (h) maintain record of appeals received and decided by the Appellate Tribunal in order;
- (i) submit to the Secretary a statement showing institution of cases for each month and year wise pendency; and

- (j) take up the case with the Department for filling the vacancies of the Chairman and members of the Appellate Tribunal within ninety days prior to the expiry of their tenure.

(4) In case the post of Registrar is vacant, the powers and functions of the Registrar shall be performed by any other official authorized by the Secretary to perform the powers and functions of the Registrar for a period not exceeding sixty days or till the post is vacant.

### **PART-III PROCEDURE IN APPEALS**

**12. Procedure for filing appeals.—**(1) An appeal under section 16A of the Act shall be submitted to the office of the Registrar during office hours by the appellant personally or through his agent or counsel or through registered post acknowledgment due.

(2) An appeal sent by post shall be deemed to have been presented on the day it was received in the Registrar office.

(3) The appellant shall submit four extra copies of the appeal in addition to the copies for each of the respondents and each copy shall be certified by the appellant or his authorized representative to be in conformity with the original appeal and shall be accompanied by—

- (a) a certified or original copy of impugned order;
- (b) where an appellant is represented by an authorized representative, the written authorization in his favour signed by the appellant:

Provided that if for any reason the authorized representative appearing for the appellant at the hearing of a

dispute could not file authorization letter along with the appeal, he shall file the same at any time before the commencement of hearing;

- (c) all documents and evidence on which the appellant wishes to rely in support of their case.

(4) The appellant shall not rely on any ground which is not stated in the appeal during the hearing except with the permission of the Appellate Tribunal.

(5) Every appeal, reply, application or any document filed before the Appellate Tribunal shall be in English or Urdu and in case it is in some other language, it shall be accompanied by a copy translated in English or Urdu and shall be fairly and legibly typed written, or printed in double spacing on one side of standard legal paper duly paginated, indexed and stitched together in paper book form.

(6) The Registrar or, as the case may be, the authorized officer shall diary the appeal showing date of receipt and the signature of the recipient.

(7) The Registrar shall within three days of receipt of an appeal, issue a notice to the respondents and the Authority whose order has been impugned.

(8) All appeals shall be heard by a bench consisting of not less than two members of which one may be the Chairman. The Chairman shall mark a freshly instituted appeal to an available bench for hearing.

**13. Limitation for filing appeal.**—(1) Every appeal against an impugned order shall be preferred within a period of thirty days from the date on which an original or certified copy of the impugned order is received by the appellant. For the purpose of reckoning period, the same shall be computed in accordance with section 12 of Limitation Act, 1908.

(2) The provisions of section 5 of the Limitation Act, 1908 shall apply to appeals under these rules.

**14. Filing of affidavit.**—Where a fact, which cannot be borne out by or is contrary to the record, is alleged, it shall be stated clearly and concisely by a duly sworn affidavit and shall have to be filed with the memorandum of appeal.

**15. Power to reject.**—The Appellate Tribunal may, after giving the parties an opportunity of being heard, reject an appeal in whole or in part at any stage in the proceedings if-

- (a) it considers that the memorandum of appeal discloses no valid ground of appeal;
- (b) it considers that the appellant is not an aggrieved party under the Act; and
- (c) the appellant fails to comply with any provision of these rules or any direction or order of the Registrar.

**16. Defective memorandum of appeal.**—(1) If the Registrar considers that memorandum of appeal is -

- (a) not filed in accordance with these rules;
- (b) is materially incomplete; or
- (c) unduly prolix or lacking clarity;

the Registrar may give such directions to the appellant, as may be necessary, to remedy the memorandum of appeal.

(2) If the memorandum of appeal is not resubmitted as directed by the Registrar, the appeal shall stand dismissed:

Provided that where the memorandum of appeal is submitted after the time specified by the Registrar, the same may be entertained on showing of cogent reasons in this behalf by the appellant.

**17. Appeal number.**—The Registrar shall enter the appeal in a register maintained for this purpose and assign a number thereto which shall constitute the title of the appeal.

**18. Notice of appeal to all concerned parties.**—Notice of admission of appeal and the day fixed for its hearing shall be served on the appellant, the respondents and on such other persons as the Appellate Tribunal may deem appropriate.

**19. Filing of reply to the appeal and other documents by the respondent.**—(1) The respondent shall file four copies of reply in addition to a copy for the appellant along with similar number of documents in a paper-book form with the Registrar within such time as Appellate Tribunal may direct.

(2) Where a respondent is represented by an authorized representative, the reply shall contain the written authorization in his favour signed by the respondent:

Provided that if for any reason the authorized representative appearing for the respondent at the hearing of a dispute could not file authorization letter along with the reply, he shall file the same at any time before the commencement of hearing;

(3) Every reply shall consist of such other documents which the respondent wishes to rely in support of his case.

(4) Every reply or application filed by the respondent before the Appellate Tribunal shall be verified in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908).

(5) The Appellate Tribunal may, in its discretion, on the application by the respondent or other interested parties, on such sufficient cause being shown, allow the filing of reply referred to in sub-rule (1), after the expiry of the period specified by the Appellate Tribunal under sub-rule (1).

**20. Consolidation, etc.**—Where two or more proceedings are pending in respect of the same decision or which involve the same or similar issues, the Chairman may, on the request of a party or the recommendation of the relevant bench hearing either of the appeals or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together, subject to consent of all parties concerned.

**21. Production of additional evidence before the Appellate Tribunal.**—(1) No party to the appeal shall be entitled to produce additional evidence either oral or documentary before the Appellate Tribunal, except with the permission of the Appellate Tribunal.

(2) If the Appellate Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders, or for any other substantial cause, or, if the adjudicating officer or authority provided under the relevant law have decided the original case without giving sufficient opportunity to the appellant to adduce evidence either on points specified by them or not specified by them, the Appellate Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(3) Where the Appellate Tribunal directs that the document may be produced or witness may be examined or evidence adduced, the adjudicating officer or the authority, as the case may be, shall comply with the directions of the Appellate Tribunal and after compliance shall send the document, the record of the deposition of the witness or the record of the evidence adduced to the Appellate Tribunal.

22. **Proceedings to abate after the death of the appellant.**---Where an appellant dies the proceedings in appeal filed by him shall abate.

23. **Parties to be represented by counsel.**---The parties to an appeal under these rules may be represented by a counsel or they may plead personally before the Appellate Tribunal:

Provided that where Government is a party in an appeal before the Appellate Tribunal, it shall be represented by a District Attorney.

24. **Withdrawal of appeal.**---The appellant may, with the permission of the Registrar, withdraw his appeal at any stage.

#### **PART-IV**

#### **POWERS OF THE APPELLATE TRIBUNAL**

25. **Powers of the Appellate Tribunal.**---The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be vested with all necessary powers under the Code of Civil Procedure, 1908 (Act V of 1908) including the powers of-

- (a) summoning and enforcing the attendance of any witness and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) accept evidence on affidavit; and
- (d) requisitioning of any public record from any Court or office and issuing commission for the examination of witnesses and documents or both.

#### **PART-V**

#### **HEARING OF APPEALS AND DECISIONS**

26. **Seat of the Appellate Tribunal.**---The Appellate Tribunal shall ordinarily hold its sittings at its permanent seat at Peshawar but may hold its sittings at any other place within the Province of Khyber Pakhtunkhwa if in the opinion of the Chairman the holding of sittings at such other place shall be convenient to the parties to proceedings before it.

27. **Date of hearing to be notified.**---The Registrar shall notify the date, time and venue of hearing of the appeal to all the parties in such manner as the Registrar or the Chairman may, by general or special orders direct.

28. **Adjournment of appeal.**---The Appellate Tribunal may, on such terms as it deems fit, adjourn the hearing of the appeal on the request of any party subject to an appeal being decided finally within one hundred eighty days of its institution. The non-availability of an authorized representative shall not be a ground for adjournment as a matter of right.

**29. Hearing of appeal.**---(1) On the day fixed for hearing or on any other day to which the hearing may be adjourned, the appellant and respondent or their authorized representative shall be available and shall be heard personally or through their authorized representative.

(2) All parties appearing before the Appellate Tribunal shall submit a summary of their arguments:

Provided that the Appellate Tribunal may consider such arguments which are included in the summary but not pressed before the Appellate Tribunal during the course of hearing.

**30. Ex-parte decision and recall of order.**---(1) Where on the date fixed for hearing or any day to which the hearing is adjourned, any or both the parties fail to appear, the Appellate Tribunal may, if it deems fit, dismiss the appeal or application in default or may proceed *ex-parte* to decide the appeal or application on the basis of the available record:

Provided that an appeal shall be decided on merits even in the event of an *ex-parte* decision on account of non-appearance of the appellant.

(2) The party in default may apply for recalling the orders of dismissal of appeal or application, as the case may be, within thirty days of the dismissal order. The Appellate Tribunal after serving notice to all the parties to the appeal, if satisfied that the relevant party was prevented from appearing for sufficient cause, recall the order and restore the appeal or application. In such eventuality, the Appellate Tribunal shall fix a date of hearing of appeal or application, as the case may be.

**Explanation:**--- In this rule the word "appear" means appearance in person or through an authorized representative.

**31. Application for interim relief.**---(1) Any party may on payment of fee as specified in Schedule-II, submit an application for interim relief to the Appellate Tribunal.

(2) An application for interim relief shall state--

- (a) the subject matter of the relevant proceedings;
- (b) the circumstances giving rise to the urgency;
- (c) the factual and legal grounds establishing a preliminary case for the grant of interim relief by the Registrar; and
- (d) the relief sought.

(3) On receiving an application for interim relief, the Registrar shall send a copy thereof to each of the other parties to the proceedings and inform them of the date by which they may submit written or oral submissions to the Appellate Tribunal. The respondents to an application for interim relief may submit a written reply to an application for interim relief.

(4) The Appellate Tribunal shall fix a date for hearing of the application for interim relief and after hearing both the parties, pass an appropriate order.

(5) If the urgency of the case so requires, the Appellate Tribunal may grant the *ad-interim* relief subject to notice to the other party for a short date and after hearing both the parties, the Appellate Tribunal may confirm or recall its earlier order.



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(5) If the urgency of the case so requires, the Appellate Tribunal may grant the *ad-interim* relief subject to notice to the other party for a short date and after hearing both the parties, the Appellate Tribunal may confirm or recall its earlier order.

(6) No interim relief or *ad-interim* relief shall be granted which has the effect of suspending the termination or suspension of an appellant from service or directing the appellant to be posted to a position being other than the last post held by him.

**32. Decision of appeal.**—(1) The Appellate Tribunal by way of a judgment in an appeal may, confirm, remand or set aside the impugned order and may enhance or reduce the penalty or make such other order as it may deem just and equitable in the circumstances of the case. The Appellate Tribunal may in its judgment direct payment of compensation by any party to another party.

(2) The Appellate Tribunal shall grant costs to the party in whose favour the judgment is issued to be paid by the other party or parties where such costs shall represent the actual costs incurred by the party as determined by the Appellate Tribunal in pursuing the appeal.

**33. Issue of directions by Appellate Tribunal.**—The Appellate Tribunal may make such orders or give such directions, as may be necessary or expedient, to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

#### **PART-VI** **FEE**

**34. Fee.**—(1) Every appeal or review application shall be accompanied with evidencing payment of fee as prescribed in Schedule-I.

(2) The Government may on the recommendation of the Chairman, review the rates of fee from time to time and amend Schedule-I and Schedule-II accordingly.

**35. Other fees.**—(1) Notwithstanding any other fees as may be stipulated, the fees other than that specified for appeals shall be such as provided in Schedule-II.

(2) All fees as specified in Schedule-I and Schedule-II shall be recovered in advance by way of depositing in Government treasury.

#### **PART-VII** **RECORD OF THE APPELLATE TRIBUNAL**

**36. Preservation of record.**—(1) The entire record of each dispute including documents forming part of appeals and other petitions shall be preserved in original by the Registrar for a period of five years from the date of the final judgment or order of the Appellate Tribunal and thereafter, remitted to the Secretary while retaining a digital record of the entire record.

(2) Any original documents produced by either party shall be returned to such party within fourteen days of issuance of the final judgment while retaining copies thereof which copies shall be attested by the Chairman of the Appellate Tribunal as true copies of the originals.

**37. Public record.**—(1) The judgments and orders of the Appellate Tribunal and the pleadings of the parties shall be public record and a certified copies thereof may be obtained by any member of the public upon submitting an application to the Registrar and payment of fee as specified in Schedule-II.

(2) Any member of the public may, on payment of the fee as specified in Schedule-II, inspect the record of the Appellate Tribunal.

**38. Classification, maintenance and preservation of registers.**—The registers of the Appellate Tribunal shall be maintained and divided into the following classes, namely:

- (a) primary registers maintained for showing institution and disposal of memorandum of appeals;
- (b) subsidiary registers maintained for administrative purposes; and
- (c) statistical registers maintained for preparing monthly and annual performance and returns of the Appellate Tribunal.

**PART-VIII**  
**GENERAL PROVISIONS**

**39. Seal of the Appellate Tribunal.**—(1) There shall be a seal of the Appellate Tribunal on which its name and insignia shall be inscribed.

(2) The seal shall remain in the custody of the Registrar or such other officer as the Chairman may direct and shall be affixed on every order passed by the Appellate Tribunal.

**40. Notice to be signed by the Registrar.**—Every notice shall be signed by the Registrar or any other officer authorized by the Registrar in this behalf and shall bear the seal of the Appellate Tribunal.

**41. Standard Operating Procedure.**—The Registrar may, with the approval of the Chairman frame and notify Standard Operating Procedures, as may be required.

**42. Language of the Appellate Tribunal.**—(1) The principal language of the Appellate Tribunal shall be English notwithstanding that pleadings may be filed in Urdu.

(2) Appeals, application, representation, document or other matters shall be fairly and legibly typed written or printed in double spacing on one side of standard legal petition paper duly paginated, indexed and stitched together in paper book form and if contained in any language other than English or Urdu shall only be admissible where a true copy of translation thereof in English accompanies the same and in the manner as deemed appropriate by the Appellate Tribunal.

**43. Office hours and holidays.**—(1) The Appellate Tribunal shall observe holidays as under, namely:

- (a) holidays as notified and declared by the Government;
- (b) winter vacations for two weeks from the 4<sup>th</sup> week of December; and
- (c) summer vacations for four weeks from 1<sup>st</sup> week of August, every year.

(2) During winter and summer vacations the Registrar shall cause for necessary staff to remain present in the Appellate Tribunal to receive claims and applications and to conduct other ministerial work:

Provided that any dispute filed during summer or winter vacations shall be deemed to have been instituted on the first day after completion of the vacations for purposes of calculating any date pursuant to these rules.

(3) The timings of the office shall be 09:00 am to 5:00 pm whereas the hearing of claims and miscellaneous applications by the Appellate Tribunal shall be as per times fixed by the Chairman of the Appellate Tribunal.

**44. Judgment and order to be signed and dated.**---(1) Every judgment and order of the Appellate Tribunal shall be signed and dated by the members comprising the Appellate Tribunal subject to agreement of a majority of the members of the bench of the Appellate Tribunal.

(2) The orders and final judgment shall be pronounced in the sitting of the Appellate Tribunal.

(3) If the members of a bench of the Appellate Tribunal disagree, each member shall author the reasons for the order or judgment and these shall be referred to the Chairman who shall by way of a separate order or judgment decide the matter. The reasons authored by each member and the Chairman shall form part of the order or judgment, as the case may be.

**45. Correction in order.**---Any clerical or arithmetical mistakes arising in a decision or any order from any accidental slip or omission may, at any time, be corrected by the Appellate Tribunal either on its own motion or on an application made by any of the parties.

**46. Hearing to be in public.**---The hearing of any appeal shall be in public except to any part where, in a particular case, the Appellate Tribunal considers it otherwise, with reasons to be recorded.

**47. Order to be communicated to parties.**---The Appellate Tribunal shall, after the order or judgment is signed, cause it to be communicated to the appellant and to

the respondent within two days of announcement of the order or judgment.

#### **PART-IX** **REVIEW AND APPEALS**

**48. Review by Appellate Tribunal.**---(1) The Appellate Tribunal may on the application of any party review an order or judgment issued by it subject to the same bench, or if any member of the bench is no longer a member of the Appellate Tribunal then at least one member of the original bench which issued the order or judgment hearing the review.

(2) A review application shall be instituted within thirty days of the issuance of the order or judgment sought to be reviewed on payment of fee as prescribed in Schedule-I.

(3) At the first hearing of a review, the Appellate Tribunal may dismiss the review if no case for review is made out or issue notice to the other party to enable the Appellate Tribunal to hear both parties.

(4) A review application shall be decided within sixty days of its institution.

**49. Appeal against an order or judgment of the Appellate Tribunal.**---(1) An appeal against the final judgment of the Appellate Tribunal shall lie to the Supreme Court of Pakistan.

(2) An appeal against an interlocutory order of the Appellate Tribunal on any application during the pendency of the appeal shall lie to the High Court within thirty days of the date of the order.

**SCHEDULE-I**

(see sub-rule (1) of rule 34 and sub-rule (2) of rule 48)

**PRESCRIBED INSTITUTION FEES**

Instituting Fee for Appeals	Rs. 100/-
Instituting Fee for Review of Order or Judgment	Rs. 5000/-

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
NORTH DEPARTMENT

Government of Khyber Pakhtunkhwa  
North Department

**SCHEDULE-II**

(see sub-rule (1) of rule 31, rule 35 and rule 37)

**PRESCRIBED FEES**

Instituting Fee for Application for Interim Relief	Rs. 100/-
Instituting Fee for any other Miscellaneous Application	Rs. 100/-
Fee for Certified Copies *Fee shall be double for Urgent Copies	Rs. 10 per page.
Fee for Inspection of Record	Rs. 50/-

Sd/-xxx-

**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

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