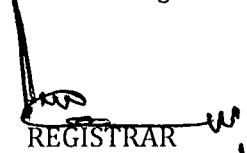




Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 358/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.06.2022	<p>The execution petition of Mr. Nisar Khan submitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<u>22-6-22</u>	<p>This execution petition be put up before Single Bench at Peshawar on <u>30-06-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
30.06.2022	<i>Notice Issued for the date fixed 12/08/2022</i>	<p>Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional AG present.</p> <p>Notices be issued to respondents for submission of implementation report. To up for implementation report on 12.08.2022 before S.B.</p> <p style="text-align: right;"> (Fareeha Paul) Member (F)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 358 /2022
In Service Appeal No.15179/2020

Nisar Khan

V/S

Health Department

INDEX

S. No.	Documents	Annexure	P. No.
01	Memo of Execution Petition	-----	01-02
03	Copy of judgment dated 25.01.2022	A	03-05
04	Wakalat Nama	-----	06


APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 358 /2022
In Service Appeal No.15179/2020

Nisar Khan, senior Clerk (BPS-14),
DHO Office Lower & Central Kurram.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 349

Dated 20/6/2022

PETITIONER

VERSUS

1. The Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa,
Peshawar.
3. The District Health ~~Education~~ ^{Officer} Officer, District Lower & Central
Kurram.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 25.01.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.15179/2020 in the Honourable Tribunal for direction the respondents to consider the petitioner for promotion to the post of Office Assistant (BPS-16) with effect from 14.01.2018, when some juniors to the petitioner were promoted to the post of Office Assistant (BPS-16) with all back and consequential benefits.

2. The said appeal was heard by this Honourable Service Tribunal on 25.01.2021. The Honourable Service Tribunal allowed the appeal of the petitioner in the terms that the petitioner be extended all back benefits including his original seniority list as stood before his compulsory retirement from service i. 12.02.2016. The petitioner was also held entitled to promotion to the post of Office Assistant (BPS-16) from the date when his junior were promoted. **(Copy of judgment dated 25.01.2022 is attached as Annexure-A)**
3. That the Honourable Tribunal in its judgment dated 25.01.2022 hold the petitioner for promotion to the post of Office Assistant (BPS-16) from the date i.e 14.01.2018 when his juniors were promoted, but after the lapse of about five months the respondents have not promoted to the petitioner to the post of office Assistant w.e.f 14.01.2018 by implementing the judgment dated 25.01.2022 of this Honourable Tribunal.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 25.01.2022 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 25.01.2022 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 25.01.2022 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


PETITIONER

Nisar Khan

THROUGH:

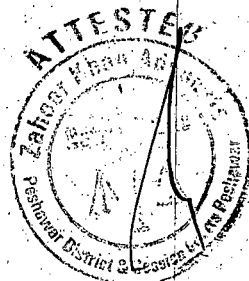

(TAIMUR ALI KHAN)

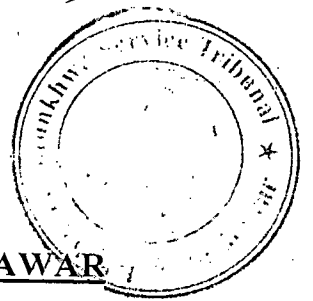
ADVOCATE HIGH COURT


AFFIDAVIT

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

[Signature]
DEPONENT





BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 15179 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15696

Dated 26/11/2020

Nisar Khan, Senior Clerk (BPS-14),
DHO Office Lower & Central Kurram.

(APPELLANT)

VERSUS

1. The Secretary Health, Khyber Pakhtunkhwa Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa Peshawar.
3. The District Health Officer, District Lower & Central Kurram.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF OFFICE ASSISTANT (BPS-16) WITH EFFECT FROM 04.01.2018, WHEN HIS JUNIORS WERE PROMOTED TO THE POST OF OFFICE ASSISTANT (BPS-16) AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD NINETY DAYS.


Filed to-day

ew.
Registrar

26/11/2020 PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF OFFICE ASSISTANT (BPS-16) WITH EFFECT FROM 04.01.2018, WHEN SOME JUNIORS TO HIM WERE PROMOTED TO THE POST OF OFFICE ASSISTANT (BPS-16) WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

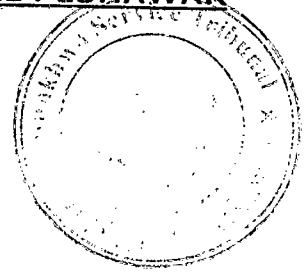

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15179/2020

Date of Institution ... 26.11.2020

Date of Decision ... 25.01.2022



Nisar Khan, Senior Clerk (BPS-14), DHO Office Lower & Central Kurram.
... (Appellant)

VERSUS

The Secretary Health, Khyber Pakhtunkhwa, Peshawar and others.
... (Respondents)

Taimur Ali Khan
Advocate ... For Appellant

Naseer-ud-Din Shah,
Assistant Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

Handwritten signature

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Senior Clerk BPS-14 was proceeded against on the charges of misconduct and was ultimately awarded with major punishment of compulsory retirement from service vide order dated 12-02-2016. Feeling aggrieved, the appellant filed departmental appeal followed by service appeal No 526/2016, which was decided vide judgment dated 18-10-2019 and was remanded to the respondents for de-novo inquiry. As a result of de-novo proceedings, the appellant was re-instated in service but during the pendency of the service appeal, the respondents promoted some officials junior to the appellant to the post of Assistant BPS-16 vide order dated 04-01-2018. Feeling aggrieved, the appellant filed departmental appeal, which was not responded

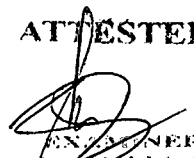
ATTESTED
Handwritten signature
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

within the statutory period, hence the instant service appeal with prayers that the appellant may be promoted to the post of Assistant BPS-16 with effect from 04-01-2018, when junior of the appellant were promoted with all back benefits.

02. Learned counsel for the appellant has contended that not taking action on the departmental appeal of the appellant within the statutory period of 90 days and not promoting the appellant to the post of assistant bps-16 with effect from 04-01-2018 are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant was re-instated with all back benefits which means that the appellant is entitled to all back benefits including seniority/promotion, as such, it is legal right of the appellant to be promoted to the post of assistant from the date, when his juniors were promoted; that the allegation on which the appellant was compulsory retired from service has not been proved in the de-novo inquiry, which shows that the appellant remained out of service for the fault of others as such the appellant could not be deprived of his legal right of promotion from the due date; that the appellant was at serial No 21 of the seniority list as stood in 2015, while other officials namely farid-ul haq and others who were promoted to the post of assistant were below the appellant in the seniority list and if the appellant was not compulsory, retired from service, he would have been promoted alongwith his juniors.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was proceeded against on the charges of misconduct and was awarded with major punishment of compulsory retirement from service vide order dated 12-02-2016; that the appellant could not be promoted as office assistant in 2018, as the appellant was compulsory retired from service and his name was excluded from the seniority list being not in active service; that because of de-novo proceedings, the appellant was re-instated in service vide order dated 18-07-2019 and now name of the appellant has been included in the seniority list, who will be promoted on his turn in due course of time.

ATTESTED


 EXAMINER
 Peshawar
 Service Tribunal
 Peshawar

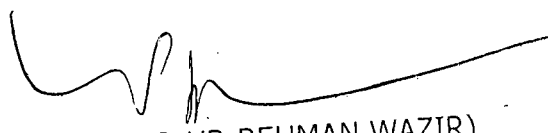
04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was awarded with major punishment of compulsory retirement from service vide order dated 12-02-2016. It was upon intervention of this tribunal in service appeal No 526/2016, when the respondents were directed to conduct de-novo inquiry vide judgment dated 18-10-2019. Because of de-novo proceedings, the appellant was exonerated of the charges and was re-instated to service with all back benefits vide order dated 05-08-2020. In the circumstance of the case and in view of the fact that the appellant was re-instated in service with all back benefit from the date of compulsory retirement, the respondents were obliged to have restored the original seniority of the appellant and consider him for promotion in accordance with law. The re-instatement of appellant from the date of his compulsory retirement has, for all intent and purposes, filled in the gap in service, if any, attributable to said penalty and which caused the revival of rights, otherwise available to the appellant before the order of compulsory retirement.

06. In view of the above, the appeal in hand is allowed in terms that the appellant be extended all back benefits including his original position in seniority list as stood before his compulsory retirement from service. The appellant is also held entitled to promotion to the post of Office Assistant BPS-16 from the date, when his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
25.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

(Certified)

Date of Presentation 25/4/22
Number 1600
Cost 185
Units 5/1
Total 221
Date 25/4/22
Date of Delivery of goods 25/4/22

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Musai Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Health Dept (Respondent)
(Defendant)

I/We, Musai Khan

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

Musai Khan
(CLIENT)

ACCEPTED
Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD ¹⁸
PESHAWAR.

No.

Regd
Appeal No. E.P. No. 358 of 20 22
Nisar Khan

Appellant/Petitioner

the Secy. Health ^{Versus} Peshawar.

Respondent

Respondent No. 3

Notice to: the Dist. Health ~~Offices~~ Offices Dist:
Lower & Central Kurram.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 30/6/2022 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement along with any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this~~

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 23rd

Day of June 2022.

for implementation
Report.

[Signature]
Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No.

E.P. No. 358
Appeal No. Nisat Khan of 20 22

(Handwritten signature)
24/16/2022

the Peshawar Health Appellant/Petitioner
Versus Peshawar Respondent

the Secretary Health KPK Peshawar Respondent No.

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the appeal/petition is fixed for hearing before the Tribunal *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

23 H

Given under my hand and the seal of this Court at Peshawar this June 22

Day of.....20

for Implementation Report

(Handwritten signature)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No.

Appeal No. E.P. No. 358 of 20 22

Nisab Khan Appellant/Petitioner

The Secy: Health Peshawar Respondent

Respondent No. 2

Notice to: the Director General Health Services
KPK Peshawar.

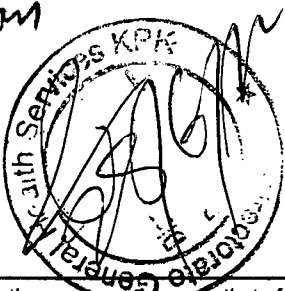
WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 30/6/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 23rd Day of June 20 22

for Implementation Report



[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Recd

APPEAL No. *Nisar Khan* of 20

Appellant/Petitioner

Sey Health Versus *EPK Peshawar*

Respondent (3)

District Health Officer, RESPONDENT(S)

District Lower & Central Kurram

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Report

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of EP already sent

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

SB
E.P No. *358*
APPEAL No. of 20*22*.

Nisai Khan

Appellant/Petitioner

Versus

Sery Health KPK Peshawar.

RESPONDENT(S)

Respondent (1) Sery Health KPK Peshawar.

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *12/15/2022* at *9:30 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Copy of EP already sent

For Disposition Report

Received today 2/18/2022

2/18/22

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. FP No. 358 of 2022

Nisar Khan

Appellant/Petitioner

Versus

Gov Health KPK Peshawar

RESPONDENT(S)

Respondent (2)
Notice to Appellant/Petitioner DC Health Services, KPK
Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 12/08/2022 at 9:00 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Imp-ment-ion
Report

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of
appeal is being
sent