Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 554/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.09.2022	The execution petition of Mr. Tariq Khan submitted today by Mr. Gohar Ali Khweshgi Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed. By the order of Chairman REGISTRAR

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

AAG

Execution Petition No. 554 /2022

In Appeal No: 4949/2021

Tariq Khan

VERSUS

District Health Officer (DHO) and others

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Dated: 15/09/2022

PETITIONER

Through

Tariq Khan
S/o Atlas Khan

Through

GOHAR ALI KHAWASHGI
Advocate, High Court Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Execution Petition No. _____/2022

In Appeal No: 4949/2021

Tariq Khan S/o Atlas Khan R/o Faqir Kallay Village Mandrakhel, Pajagi Road, Peshawar.

.....*Appellant*

VERSUS

1. District Health Officer (DHO) Near Molvi Gee Hospital, Hashtnagri, Peshawar.
2. Director EPI, Khyber Pakhtunkhwa, Warsak Road, Old FATA Secretariate Building, Peshawar.
3. Director, General Health Services, Directorate, Warsak Road, Old FATA Secretariate Building, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariate, Peshawar.
5. Government of Khyber Pakhtunkhwa through Secretary Finance Civil Secretariate, Peshawar.

.....*Respondents*

PETITION FOR EXECUTION OF APPEAL OF THE APPELLANT / PETITIONER REGARDING THE JUDGMENT OF THIS TRIBUNAL APPEAL NO. 4949/2021 DATED 22/06/2022 ALONG WITH BACK BENEFITS, PLEASE.

2

Respectfully Sheweth;

The petitioner humbly submits as under;

1. That petitioner has filed an appeal before this Hon'ble Tribunal who got decision / judgment in his favor with all back benefits from the date of termination dated 16/04/2019. ***(Copy of appeal is attached as Annexure "A").***

2. That Petitioner made presentation before the authority who refused to implement the judgement with letter and spirit. ***Copy of application is attached as Annexure "B").***

3. That petitioner is jobless and eats from hand to mouth, passing through starvation.

4. That there is no legal bar on implementation.

5. That no petition for leave to appeal has been filed before Hon'ble Supreme Court of Pakistan against the judgment of this tribunal. by respondents.

It is therefore, most humbly prayed that on acceptance of this petition, the judgment of this tribunal attached may please be implement with all back benefits please.

Dated-15/9/2022

Petitioner

Through

Ghoorkhali Khattak, advocate peshawar

Tariq Khan
S/o Atlas Khan

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Execution Petition No. _____/2022

In Appeal No: 4949/2021

Tariq Khan

VERSUS

District Health Officer (DHO) and others

AFFIDAVIT

I, ***Tariq Khan S/o Atlas Khan R/o Faqir Kallay Village Mandrakhel, Pajagi Road, Peshawar***, do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Dated: 15/09/2022

DEPONENT

CNIC No: 17301-4264727-7

Muhammad Raza Shah Advocate
Oath Commissioner
Peshawar

SEP 2022

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 5054
Dated 29-4-2021

Service Appeal No. 4949 /2021

Tariq Khan S/o Atlas Khan R/o P.O Faqir Kallay, Village Mandra Khel, Pajaggi Road, Peshawar, Ex-E.P.I, Technician Peshawar BHU Mandra Khel, Peshawar.....(Appellant)

VERSUS

1. District Health Officer (DHO) Near Molvi Gee Hospital, Hashtnagri, Peshawar.
2. Director E.P.I, Khyber Pakhtunkhwa, Warsak Road, Old FATA Secretariat Building, Peshawar.
3. Director General Health Services Directorate, Warsak Road, Old FATA Secretariat Building, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat, Peshawar.
5. Government of Khyber Pakhtunkhwa through Secretary Finance Civil Secretariat, Peshawar.....(Respondents)

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, rules 1974, AGAINST THE IMPUGNED ORDER OF TERMINATION OF THE APPELLANT BY THE RESPONDENTS DATED 16/04/2019 BEARING ENDORSEMENT NO. 3426-33/DHO FOR REINSTATEMENT ALONG WITH BACK BENEFITS.

Filedto-day
Registrar
29/4/2021

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 4949/2021

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Tariq Khan S/o Atlas Khan R/o P.O Faqir Kalay, Village Mandra Khel, Paggai Road, Peshawar. Ex EPI Technician Peshawar BHU Mandra Khel, Peshawar.

.... *(Appellant)*

Versus

District Health Officer (DHO) Hashtnagri, Peshawar and four others.

.... *(Respondents)*

Mr. Gohar Ali Kheshgi
Advocate

... For appellant

Mr. Muhammad Riaz Khan Paindakhel
Asstt. Advocate General

... For respondents

Date of Institution.....29.04.2021
Date of Hearing.....22.06.2022
Date of Decision.....22.06.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 16.04.2019 in pursuance of which services of the appellant were terminated and he has appealed that the order may be set aside and he may be reinstated into service with all back benefits.

2. Brief facts of the case, as per available record, are that the appellant was appointed EPI Technician (BPS-6) under EPI/GAVI Project in Health Department vide order dated 30.04.2012. His services were terminated vide order dated 20.10.2014 in the light of a preliminary inquiry report in which he was found guilty in his official duty during measles campaign 2014 which caused death of 5 children...

On his departmental appeal dated 29.04.2019. another inquiry was conducted in which minor penalty was proposed. but no action was taken on that report as the project had closed on 30.06.2015. Later on all the employees of GAVI and JICA projects under EPI were regularized through an order of Director General Health Services Khyber Pakhtunkhwa Peshawar on 16.02.2017. The name of appellant was also mentioned on serial no 40 of that order. Through an order dated 16.04.2019 of District Health Officer Peshawar services of the appellant were terminated due to the reason "being regularized and appointed against rules/law/act." The appellant submitted an appeal on 29.04.2019 against that order to which the respondents did not reply. The appellant filed writ petition before hon'ble Peshawar High Court which was converted into service appeal and was referred to Service Tribunal through judgement dated 15.04.2021. Hence the service appeal.

3. Respondents were put on notice who submitted written replies comments on the appeal. We heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. Record reveals that the appellant was appointed EPI Technician (BPS-6) on contract basis in the year 2012, and during 2014 based on death report during measles campaign a preliminary inquiry was conducted on the order of District Health Officer Peshawar. The Inquiry Committee submitted its report recommending strict action against the appellant (Mr. Tariq Khan). They further recommended a detailed inquiry into the matter. Instead of conducting a formal inquiry, competent authority terminated the services of the appellant without fulfilling the codal formalities as given in government rules. It was as aftermath of his departmental appeal that another inquiry was conducted in which it was recommended interalia that the accused (appellant) may be censured and warned to

be careful in future. The inquiry committee clearly mentioned that the incident was not intentional rather Mr. Tariq khan left the duty point to facilitate the vaccine immunization team and to avoid any hurdle in the campaign. Handing over the vaccination point to an untrained person was the only negative point going against the appellant. The competent investigation agency AEFI Peshawar recommended in their report that strict disciplinary action may be taken against the SOPs violator (Mr. Tariq Khan) but they did not recommend for his termination from service. It was noted that report was submitted on 16.03.2015 as is evident from a stamp on the face of the report. The case file is silent from the date the report was submitted i.e 16.03.2015 to 16.04.2019, the date of the order through which services of the appellant were terminated by the District Health Officer, Peshawar on the direction of Director General Health Services, Peshawar. It was further worth consideration that the project closed on 30.06.2015 but in the light of the Regularization Act passed by Provincial Assembly in 2016 services of the employees of EPI, GAVI and JICA were regularized vide office order dated 16.02.2017 in which the name of the appellant was also mentioned at serial No. 40. If we accept the point raised by the respondents that he was regularized without recommendation of scrutiny committee and that he was not fit for regularization, the record is silent on any cancellation order or corrigendum of the order dated 16.02.2017. As the competent authority has itself regularized the services of the appellant, therefore, this appeal is allowed as impugned order dated 16.04.2019 is set aside and appellant is reinstated with all back benefits. Parties are left to bear their own costs. Consign.

5. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22nd day of June, 2022.*

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

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بحضور جناب ڈاکٹر کشور حنیف صاحب سیکرٹری سروسز ٹریبونل صوبہ خیبر پختونخوا پشاور

درخواست بغرض عمل درآمد کمرہ برفیصلہ مورخہ 22 جون 2022ء بر اپیل نمبر 4969/2021۔

جناب عالی: سائل/اپیلانٹ حسب ذیل عرض رساں ہے

1۔ یہ کہ سائل نے اپنے برخاستگی کے خلاف ایک اپیل بعنوان [illegible] حکومت خیبر پختونخوا سروسز ٹریبونل میں دائر کی تھی۔ جو کہ فیصلہ شدہ بحق سائل/اپیلانٹ مورخہ 22 جون 2022ء کمال لف ہذا ہے

2۔ یہ کہ سائل فیصلہ کے ایک ہفتہ کے اندر اندر کئی بار دفتر ہذا جاکر گیا لیکن بے سود

3۔ یہ کہ سائل/اپیلانٹ ایک بار پھر بذریعہ درخواست ہذا گذارش کرتا ہے کہ ٹریبونل کے فیصلہ پر عمل درآمد کیا جائے لیکن شنوائی نہ ہوئی

4۔ یہ کہ سروسز ٹریبونل کے فیصلہ کی تعمیل ادائے واجب ہوگئے

لہٰذا استدعا ہے کہ منظوری درخواست ہذا سائل/اپیلانٹ کو سروسز ٹریبونل کے فیصلہ تعمیل حاصل کیا جائے از راہ کرم نوازش

مورخہ 12 اگست 2022ء

سائل/اپیلانٹ خود

شناختی کارڈ نمبر = 17301-4264727-7

ERO
28-8-22
12/8/22