

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 511/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.08.2022	<p style="text-align: center;">The execution petition of Mr. Muhammad Sohail submitted today by Mr. Ali Azim Afridi 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.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: center;">REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

Execution Petition No. 511 /2022

In Re:

Petition No. 444/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1115

Dated 30/8/2022

Muhammad Sohail Ex-Deputy Secretary (BPS-18) Industries,
Commerce and Technical Education Department Khyber
Pakhtunkhwa R/O House No. 31, Street No. 9-A Gulbahar Colony
No. 2, Peshawar City

....Petitioner

VERSUS

1. Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar
2. Secretary Commerce & Industries Department, Civil Secretariat,
Peshawar
3. Secretary Environment Department, Peshawar

....Respondent(s)

**APPLICATION FOR EXECUTION OF THE JUDGMENT DATED
01.02.2022**

Respectfully Sheweth,

1. That the titled petition No. 444 of 2019 was preferred before the Hon'ble Tribunal which after passing through the course of hearing was ultimately decided on 01.02.2022 in favour of the present petitioner. **(Copy of the Judgment dated 01.02.2022 is annexed as Annexure "A")**.

2. That the Hon'ble Tribunal vide its judgment had issued certain directions, in the similar terms, *"The afore-named representative states that Eight posts of Senior Clerks are lying vacant and are due for appointment through promotion; the appellant will also be promoted against one of the aforesaid Eight vacant posts under due course; keeping in view the said statement of the representative of respondents made at the bar, we are inclined to dispose of this appeal"*.

In **Zahooruddin Sheikh's Case**¹, "it was held that "Once a judgment is issued in favour of a civil servant, his terms and conditions as infringed by an order of the authority in question stands addressed to the extent as ordained in the judgment concerned. There is, therefore, no denying the fact that if the judgment is not implemented and leave to appeal is either not filed or declined, there is no escape route for the Department but to implement the judgment in letter and spirit", which appears to be otherwise in the case at hand.

3. That the respondent No. 1 and 2; being the competent authority is duty bound to implement the judgment of the Hon'ble Tribunal in its letter and spirit but the same is done away with; leaving the present petitioner nowhere but high and dry and that too aloof.

4. That the Hon'ble Tribunal is empowered by virtue of Sub-Section 2(d) of Section 7 of the KP Services Tribunal Act

¹ 2007 PLC (C.S) 959

1974 read with rule 27 of the KP Services Tribunal Rules, 1974; so as to execute its judgment dated 01.02.2022 passed in favour of the present petitioner and as such against the respondents.

In ***Ahmed Nawaz Khan's Case***² It was held that, "*The proceedings on application for execution or implementation of the Tribunal's orders are undoubtedly one of the steps in the proceedings of the main appeal. Therefore what follows is that the Tribunal has got the same powers as are vested in the Civil Court under the Code of Civil Procedure, not only for the purpose of deciding an appeal but also for consequential purpose of deciding the petition for implementation of its order; which exercise is of essence and that too in a jiffy.*"

It is therefore humbly prayed that the respondents may graciously be proceeded against for non-compliance of the judgment dated 01.02.2022.

Any such order be passed which the Hon'ble Tribunal deems fit and appropriate during the course of proceedings; for securing the ends of justice.

Petitioner

Through

Ali Azim Afridi
Advocate High Court

Contact # 0333-9555000

² 1989 PLC (C.S) 398; 2017 PLC (C.S) 1102

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

Execution Petition No. /2022

In Re:

Petition No. 444/2019

Mr. Muhammad Sohail

....Petitioner

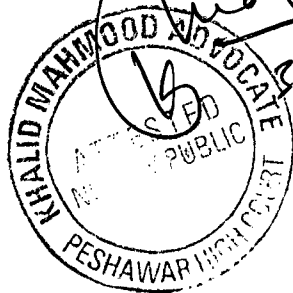
VERSUS

Chief Secretary KP & Others

....Respondent(s)

AFFIDAVIT

I **Muhammad Sohail Ex-Deputy Secretary (BPS-18) Industries, Commerce and Technical Education Department Khyber Pakhtunkhwa R/O House No. 31, Street No. 9-A Gulbahar Colony No. 2, Peshawar City**, do hereby solemnly affirm that the contents of the execution petition are true and correct to the best of my knowledge, belief, ability and nothing has been concealed therein from the Hon'ble Tribunal.



DEPONENT

(5)

(2)

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

Khyber Pakhtunkhwa
Service Tribunal

Review petition No. 4114/2019

Diary No. 1678
Date: 25/11/2019

Service Appeal No. _____

1. Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa (KP), Peshawar & R/o House No. 31, Street No. 9-A, Gulbahar Colony No.2, Peshawar City.

..... (Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa Commerce & Industries Department, Peshawar.
3. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.

..... (Respondents)

**LEAVE TO FILE REVIEW APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974. THE
JUDGEMENT ANNOUNCED VIDE DATED 13.04.2016.
WHEREBY THE SERVICES TRIBNAL CONVERT THE
PUNISHMENT AWAREDED BY DEPARTMENTAL INQUIRY
COMMITTEE IN TO COMPLUSORY RETIREMENT FROM
SERVICES.**

Prayer in Appeal:

1. Upon acceptance of this leave to file review appeal the
appeilant pray as below:
 - 1.1. The decision/order announced dated 13.04.2016. may
please be review and set-aside on humanitarian ground
(Annexure-2).

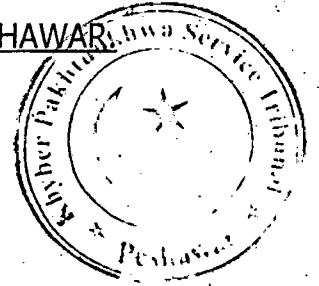
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No. 444/2019

Date of Institution ... 25.11.2019

Date of Decision ... 01.02.2022



Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department Khyber Pakhtunkhwa Peshawar. R/O House No. 31, Street No. 9-A Gulbahar Colony No. 2, Peshawar City.

... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others. ... (Respondents)

Present.

Mr. Fazal Shah Mohmand,
Advocate

... For Petitioner.

Mr. Muhammad Adeel Butt,
Addl. Advocate General,

... For respondents.

MR AHMAD SULTAN TAREEN
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-Through the Review Petition described above in the heading, the petitioner has prayed for the relief as copied below:-

"1. Upon acceptance of this leave to file review appeal, the appellant pray as below:-

1.1. The decision/order announced dated 13.06.2016 may please be reviewed and set aside on humanitarian ground.

1.2. The appellant appeal/case may please be transferred to the Establishment Department to conduct re-inquiry/hearing."

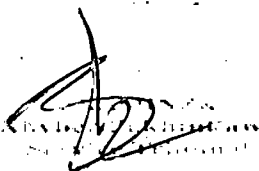
APPROVED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. The facts stated in the Review Petition precisely include that the petitioner was proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and penalty of removal from service was imposed upon him vide order dated 19.05.2015. He filed departmental appeal which was rejected vide order dated 05.08.2015. Consequently, Service Appeal No. 939/2015 was preferred before this Tribunal. The service appeal was adjudicated upon by the Tribunal under due course and vide judgment dated 13.04.2016, the penalty of removal from service was converted into that of compulsory retirement.

3. The grounds urged in the Review Petition include that no original documents were presented by the respondents before the departmental enquiry committee, and before this Tribunal; that the episodes of departmental enquiry, review petition and proceedings before this Tribunal were misguided by presenting a photocopy of fabricated, concocted, false and baseless letter provided by the Establishment Department, having no legal status under the *Qanun-e-Shahadat* Ordinance, 1984; that no relevant and specific documentary proofs were presented; that the evidence presented by the respondents was based on mere verbal statements specifically the statement of Mr. Naeem Khan which was used to build ground to initiate departmental proceedings; that the appellant was not treated in accordance with the basic principles of law and his rights guaranteed under the law were violated; that no legal proceedings were adopted to conduct departmental enquiry and awarded major penalty of removal from service; that the charges leveled against the appellant were never proved in the enquiry; and that the appellant never committed any act or omission which should be termed as misconduct.

4. Arguments advanced on behalf of the petitioner and by learned AAG on behalf of the respondents have been heard. Copies of the record comprising



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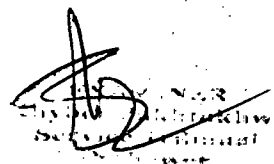
judgment dated 13.04.2016 of this Tribunal, charge sheet/statement of allegations and reply, enquiry report and proceedings, show cause notice and reply, among others as annexed with the Review Petition have been perused.

5. The maintainability of this review petition is the first point for determination before embarking upon reviewability of the impugned judgment. Needless to say that this Tribunal has been established under the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with defined jurisdiction by the same statute. According to sub section (2) of Section 3 of the said Act, the Tribunal has been vested with exclusive jurisdiction in respect of matters relating to terms and conditions of service of civil servant including disciplinary matters. Section 4 of the Act ibid provides that any civil servant aggrieved by any final order, whether original or appellate made by departmental authority in respect of any of the terms and conditions of his service may prefer an appeal to the Tribunal having jurisdiction in the matter. However, Section 4 ibid does not provide right of appeal for civil servant in disciplinary matters. The right of appeal in disciplinary matter has been provided specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 which is copied below for ready reference:-

"19. Appeal before Khyber Pakhtunkhwa Services Tribunal-

(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974(Khyber Pakhtunkhwa Act No. 1 of 1974).

(2) xxx

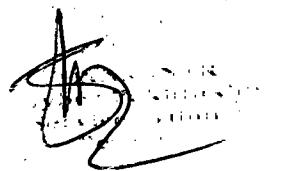


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6. In view of the above legal position, a civil servant has been given right of appeal generally in respect of any of the terms and conditions of his service under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 while specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 in respect of disciplinary matters.

7. The Khyber Pakhtunkhwa Service Tribunal Act does not specifically provide for right to file a review petition before the Service Tribunal against its decision made in pursuance to the appeal preferred under Section 4 of the Act or Rule 19 of the Government Servants (E&D) Rules, 2011. Khyber Pakhtunkhwa Service Tribunal Rules, 1974 have been framed in pursuance to Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for carrying out the purpose of the said Act. However, the said rules are also silent about review petition. In general sense, the purpose of review petition is to make a request/submission for reconsideration of a decision already made by a Court/Tribunal for the purpose of making changes or making of fresh decision. In the strict legal sense, a court or Tribunal having given a final decision become *functus officio* and review of the decision thereafter is subject to the jurisdiction expressly provided by law or derived impliedly. In the present case, this Tribunal has got no express jurisdiction provided under the Act or Rules discussed above to embark upon review of its own decision. However, Federal Service Tribunal (FST) established under the federal legislation i.e. Service Tribunals Act, 1973 (LXX of 1973) has been vested with review jurisdiction under section 4A of the said Act. The same is copied herein below:-

"4A. Review.—(1) A Tribunal shall have the power to review its final order on a review petition filed by an aggrieved party within thirty days of the order on the following grounds, namely:-



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- (i) *discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;*
 - (ii) *on account of some mistake or error apparent on the face of record; or*
 - (iii) *for any other sufficient cause."*
- (2) *The Tribunal shall decide the review petition within thirty days.*
- (3) *The Tribunal may confirm, set aside, vary or modify the judgment or order under review."*

Amended

8. FST and all provincial service tribunals including Khyber Pakhtunkhwa Service Tribunal have been established in pursuance to Article 212(1)(a) of the Constitution of Islamic Republic of Pakistan obviously with different territorial jurisdictions. Adjudicatory jurisdiction, which refers to the power of a tribunal to hear an appeal, is common for all the said tribunals as provided under section 4 of respective Service Tribunal Acts. However, unlike Provincial Service Tribunals, FST has been vested with express powers of review under section 4A copied above in addition to its basic adjudicatory jurisdiction under section 4 of Service Tribunal Act, 1973. Article 240 of the Constitution of Pakistan relates to appointment to Service of Pakistan and conditions of service. The Service of Pakistan as defined by Article 260 of the Constitution means any service, post or office in connection with the affairs of the Federation or a Province. Needless to say that FST exercises jurisdiction in connection with appeals of Federal Civil Servants who make part of the Service of Pakistan and the power of review has been expressly given to FST under Section 4A of the Service Tribunal Act, 1973 in the cases of such civil servants which the Provincial Service Tribunals lack in absence of appropriate legislation

[Signature]

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for the sake of bringing conformity in the adjudicatory jurisdiction as the Provincial Civil Servants also make part of Service of Pakistan like the Federal Civil Servants. Therefore, if a civil servant in the province seeks review of the judgment of this Tribunal, he being part of the Service of Pakistan like Federal Civil Servants cannot be compelled to avoid seeking review when there is no specific prohibition in this respect in the Khyber Pakhtunkhwa Service Tribunal Act, 1974. On the other hand, having regard to general conformity of jurisdiction of FST and Khyber Pakhtunkhwa Service Tribunal borrowing of review jurisdiction by the latter from the former is best suited to the purposes of Article 4 read with Article 25 of the Constitution of Pakistan. Hence, the review petition at hand is held as maintainable.

9. Coming to reviewability of the judgment passed by this Tribunal against the petitioner, it is apt to reproduce herein below the concluding part of the impugned judgment:-

"We have carefully perused the record and have come to the conclusion that all codal formalities for disciplinary action against the appellant have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stands proved against the appellant, therefore, he has been punished. The major punishment awarded to the appellant is that of removal from service however it was observed that the appellant has rendered about thirteen years of service. Presently he was in grade-18 which shows that he was promoted from grade-17. Since Section-19 of the Civil Servant Act, 1973 provides for compassionate allowance not exceeding two-third of the pension or gratuity to dismissal/removed Government Servant on compassionate ground, therefore, the Tribunal is inclined to form the opinion that though penalty of removal from

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JUDGE
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

service and that of compulsory retirement both falls in the domain of major punishment yet the latter is lesser harsh. We therefore, deem it appropriate to convert the appellant punishment of removal from service into that of compulsory retirement."

10. The conditions which work for review of a judgment are as follow:-

- (i) *discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;*
- (ii) *on account of some mistake or error apparent on the face of record; or*
- (iii) *for any other sufficient cause.*

11. In order to see whether any of the above conditions is instrumental to make the review of impugned judgment possible, we have to have recourse to the charge sheet served upon the petitioner for formal inquiry. The said charge sheet includes three heads of charge as copied below:-

- i) You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Communication Limited (Mobilink).**
- ii) You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.**

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iii) You had no official relation being a Deputy Secretary Industry with the EPA Environmental Approval but got yourself involved in it.

12. According to inquiry report, first charge was not proved. The second charge as per Findings of Inquiry Committee was proved. The said charge relates to delivery of EPA approval in office of the Chief Secretary. The said committee as per its observation was concerned that a letter which was neither addressed nor endorsed to the Chief Secretary Khyber Pakhtunkhwa had been registered under Diary No. 10269 on 25th September, 2013 by Mr. Zafrullah, Junior Clerk, Chief Secretary Office. His statement that he received it with "positive intention" was noted with a question by the Committee that what could have been that "positive intention"? The Inquiry Committee itself answered that this was a lapse on part of him (Zafrullah). The Committee then embarked upon discussion of statements of other persons having no relevancy at all to proof of second charge but there seems no effort on part of the inquiry committee to dig out that who actually delivered the EPA approval to Mr. Zafarullah, Junior Clerk, Chief Secretary Office. When no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office, it was not warranted for the Inquiry Committee to give findings as to proof of said charge against the accused/petitioner. The third charge was itself inconsequential and it could work when there was no second opinion as to proof of the second charge. As already noted that first charge was not proved against the petitioner even during the departmental proceedings while second charge was held as proved quite imaginatively just to show something against the accused let it be with findings highly irrational and farfetched.

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SECRETARY
KHYBER PAKHTUNKHWA

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13. The concluding part of the judgment of this Tribunal impugned for review has already been reproduced herein above. Accordingly, it was concluded that all codal formalities for disciplinary action against the appellant (present petitioner) have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stand proved against the appellant, therefore, he has been punished. As far as fulfillment of codal formalities for disciplinary action is concerned, it is a matter relating to due process which the departmental authorities are bound to ensure in the proceedings but it also makes part of due process that evidence collected during inquiry is appraised impartially having regard to its probative value. Prior to initiation of disciplinary proceedings, there were only verbal allegations against the accused/petitioner which culminated into three heads of charges already discussed above. The inquiry report if read as a whole is mostly imaginative and unsupported by any tangible material. The factual details followed by pro and contra arguments were summed up in paragraph 10 of impugned judgment of this Tribunal which includes the findings that it is established on record that NOC in question was a fake document. Charge No. 2 pertains to the delivery of this fake document about which the inquiry committee reached on the conclusion that the document had been delivered by appellant himself to Muhammad Naeem, PS of the Secretary Environment. The finding is based on statement of Muhammad Naeem. May be there would have been a case of an allegation against the petitioner at the stage of facts finding that he delivered fake NOC to afore-named Mr. Muhammad Naeem but this allegation did not make part of the charge sheet or statement of allegations served upon accused/petitioner in the course of formal disciplinary proceedings. The findings in the impugned judgment of this Tribunal in this respect and believing the proof of second charge are beyond the scope of


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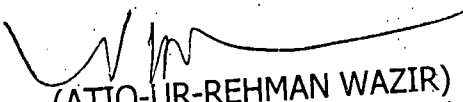
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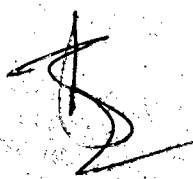
charge sheet which is an error on the face of record making a good ground for review of the impugned judgment. It has been observed herein above that no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office. The alleged delivery of fake NOC to Mr. Muhammad Naeem cannot be stretched for proof of second charge in absence of further inquiry as to how and when the petitioner/accused had delivered fake NOC in the office of Chief Secretary. Therefore, there is a need of denovo inquiry in this respect to this extent.

14. For what has gone above, this review petition is accepted. Consequently, impugned judgment of this Tribunal being reviewable is set aside. The impugned order of removal of the petitioner from service is also set aside. He is reinstated into service for the purpose of denovo inquiry to be completed within 90 days of the receipt of this judgment officially. The back benefits are subject to outcome of the denovo inquiry. There is no order as to costs. File be consigned to the record room.


(AHMAD SULTAN TAREEN)
Chairman


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

ANNOUNCED
01.02.2022



21-6-22

4000
42/-
41/-
46/-

21-6-22
21-6-22

PC-16-6960

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Ali Azim Afridi

VAKALATNAMA

BEFORE THE Service Tribunal KP Peshawar

Muhammad Sohail Plaintiff(s)/Appellant(s)
Applicant(s)/Petitioner(s)

VERSUS

Chief Secretary, Civil etc Defendant(s)/Respondent(s)
Accused

FOR Muhammad Sohail

I/We, hereby appoint **Mr. Ali Azim Afridi**
(Advocate High Court)

1. To appear, act and plead for me/us in the titled case before the Court/Tribunal in which the same maybe tried or heard, and any other proceedings arising therefrom or ancillary therewith and its stages that I personally could do if this instrument had not been executed.
2. That fee paid, or agreed to the said Counsel is for this Court alone and no part of the fee is refundable. The Counsel shall be entitled to retain costs payable by the opposite side.
3. I, we, will make arrangement for attending the Court on every hearing to inform my/our Counsel when the case is called. The Counsel shall in no way be responsible for any loss caused to me/us through my/our failure to inform him.

AND hereby agree:-

4. That the Counsel shall be entitled to withdraw from the prosecution of the titled case if the whole or any part of the agreed fee remains unpaid.
5. I/We have read the above terms and conditions and the same have been explained to me/us; and I/We have accepted them in WITNESS WHEREOF; I/We have set my/our hand this ___ day of _____ 20

ACCEPTED

Signature of Counsel

Signature of Client

Email: - alee_1@live.com

Contact # 0333-9555000