



Form- A  
FORM OF ORDER SHEET

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

Case No. 311/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/2/2019	<p>The appeal of Mr. Farooq Ali Shah resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 28/2/19</p>
2-	11/03/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

29.03.2019

Learned counsel for the appellant present. Preliminary arguments heard.

Main plea of the Learned counsel for the appellant is that the respondents advertised various posts including the post of Ward Attendant in the newspaper in the year 2008 and the post of Ward Attendant was advertised in BPS-02; that the appellant applied for the post of Ward Attendant BPS-02 and declared successful however the appellant was appointed as Ward Attendant vide order dated 16.03.2012 in BPS-01 instead of BPS-02; that the appellant has filed the present service appeal being aggrieved against his appointment in BPS-01 instead of BPS-02; that prayer of the appellant is for the grant of pay scale BPS-02 instead of BPS-01 w.e.f the date of his appointment i.e. 16.03.2012.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B

Appellant Deposited  
Security & Process Fee

  
Member

10.05.2019

Junior to counsel for the appellant present. Written reply not submitted. Saleem Ur Rehman DMS representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 27.06.2019 before S.B.

  
Member


27.06.2019

Junior to counsel for the appellant present. Written reply not submitted. M/S Hazrat Shah Superintendent (for respondent No.1 & 3) Sajid Superintendent (for respondent No.2), Salim ur Rehman DMS (for respondents No.4 & 5) present and requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 22.08.2019 before S.B.

  
Member

22.08.2019

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Sajid Superintendent (for respondent No.2) Saleem Javid Litigation Officer (for respondent No.3) Mr. Sikandar Hayat Coordinator EP-II and Ahmed Jan Junior Clerk (for respondents No. 4 & 5 present. Written reply no submitted. Representative of the respondents seeks further time to furnish written reply/comments. Granted. To come up for written reply/comments on 20.09.2019 before S.B.

  
(Hussain Shah)  
Member

20.09.2019

Junior to counsel for the appellant and Addl. AG alongwith Ahmad Jan, Junior Clerk, Mushtaq Shah, Senior Clerk Hazrat Shah, Superintendent for the respondents present.


Representatives of the respondents seek further time. Last opportunity is granted to the respondents. To come up for requisite reply/comments on 17.10.2019 before S.B.

  
Chairman

17.10.2019

Junior to counsel for the appellant and Addl. AG alongwith Saleemur Rahman, DMS, Sher Baz Khan, SO, Saleem Javed, Litigation Officer and Shafique, Senior Clerk for the respondents present.

Respondents have not furnished their respective reply/comments despite last opportunity. The appeal is, therefore, posted to D.B for arguments on 23.12.2019.

  
Chairman

23.12.2019

Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Ahmad J.C present. ~~Adjournment requested to reply.~~ Adjourn. To come up for ~~the same~~ arguments on 31.01.2020 before D.B.

  
Member

  
Member

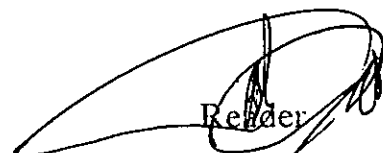
31.01.2020

Learned Members on tour at Camp Court, D.I.Khan, therefore the case is adjourned to 27.03.2020 for the same.

  
Reader

27.03.2020

Due to COVID-19, the case is adjourned to ~~04.08~~ 04.08.2020 for the same.

  
Reader

04.08.2020

Due to summer vacation, the case is adjourned. To come up for the same on 03.12.2020 before D.B.

  
Reader

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

Service Appeal No.311/2019  
Mr. Farooq Ali Shah  
Health Department

.....Appellant

VS

1. The Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
2. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar
3. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar
4. The District Health officer, District Dir Lower.
5. The Medical Superintendent DHQ Hospital Taimergara, Dir Lower.

----- Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2**

**Respectfully Sheweth:-**

**Preliminary Objections.**

- 1) That the Appellant has no cause of action and locus standi.
- 2) That the Appeal in hand is not maintainable in its present form.
- 3) That the Appellant has not come to this court with clean hands.
- 4) That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.

**FACTS**


1. Pertains to record, hence needs no comments.
2. Incorrect. Departmental Selection Committee has never allotted any Basic Pay Scale.
3. Incorrect to the extent that EDO, Health (Dir Lower) has issued appointment orders in BPS-1 while fixed pay employee are not entitled for Basic Pay Scale.
4. Pertains to record, detail reply has been given in Para-3.
5. Needs no comments.

**GROUND**

- A. Incorrect. Finance Department created posts as Fixed Pay Basis on the demand of Health Department. Hence fixed pay post has no Basic Pay Scale.
- B. Incorrect action of the replying respondent is under law and rules.
- C. Incorrect. As explain above.
- D. As explain in Para-A of grounds mentioned above
- E. Incorrect. As explain above.
- F. Incorrect. As explain above.
- G. Incorrect. As explain above.
- H. Incorrect. The appellants are fixed pay employees while Civil Servant Act, 1973 is not applicable to fixed pay employee.
- I. The respondents also seek permission to raise additional grounds at <sup>the</sup> time of hearing.

**Prayer:-**

It is therefore most humbly prayed that in view of the above explanation/narration the instant Service Appeal being devoid of merit may graciously be dismissed.

  
SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA FINANCE DEPARTMENT  
(RESPONDENT NO.02)  
SECRETARY  
Govt. of Khyber Pakhtunkhwa  
Finance Deptt.


03.12.2020

Due to pandemic of Covid-19 , the case is adjourned to  
25.02.2021 for the same as before.

  
Reader

25 .02.2021

Due to Pandemic of Covid-19, the case is adjourned to  
03.06.2021 for the same.


  
Reader

03.06.2021

Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate  
General alongwith Nisar Ahmad Assistant for respondents  
present.

File to come up alongwith connected appeal  
No.230/2019 titled Khalid Mehmood Vs. Health  
Department, on 16.06.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

16.06.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Naseem Khan S.O for respondents present.

File to come up alongwith connected appeal No.230/2019 titled Khalid Mehmood Vs. Health Department on 27.09.2021 before D.B.



(Rozina-Rehman)  
Member(J)



Chairman

26.01.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 17.02.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

17.02.2022


Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 10.06.2022 for the same as before.

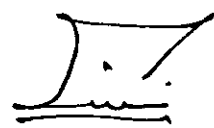
  
Reader

10.06.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 01.09.2022 before the D.B.


  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

01.09.2022

Learned counsel for the appellant present. Mr. Ahmad Jan, J.C alongwith Mr. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Learned Member (Judicial) Mrs. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 10.11.2022 before the D.B.

  
(Salah-Ud-Din)  
Member(J)




10.11.2022

Junior to counsel for the appellant present.

Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present.

Former made a request for adjournment that he has not prepared the brief. Adjourned. To come up for arguments on 10.01.2023 before the D.B.

(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)