Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No._____535/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.09.2022	The execution petition of Mr. Shoaib Khan submitted today by Mr. Noor Muhammad Khattak 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 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

EXECUTION PETITION NO. 535 /2022
In
SERVICE APPEAL NO.923/2021

SHOAIB KHAN VS HEALTH DEPARTMENT

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APPELLANT

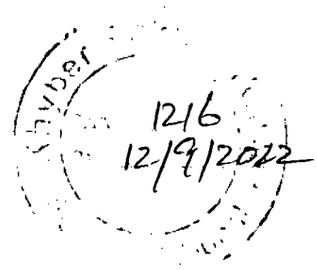
THROUGH:

NOOR MOHAMMAD KHATTAK
Advocate, Supreme Court of Pakistan
TF-291, 292, Deans Trade Centre,
Peshawar Cantt:
Cell Number: 0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Implementation/COC Petition NO. 535 /2022
In
SERVICE APPEAL No. 923 /2021



SHOAIB KHAN Provincial Drug Inspector (BS-17),
O/O the Drug Control District Health Office District Mardan.

.....APPELLANT

VERSUS

1- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.
3- The Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa Peshawar.

.....RESPONDENTS

IMPLEMENTATION/EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT PASSED VIDE DATED : 06/12/2021 IN SERVICE APPEAL NO.923/2021 TITLED AS SHOAIB KHAN VS HEALTH DEPARTMENT & OTHERS IN TRUE LETTER & SPIRIT.

R/SHEWETH:

1- The, the appellant filed Service Appeal bearing office No. 923/2021 before this august Service Tribunal in which the appellant impugned the transfer notification vide date 06-10-2020.
(Copy of the order vide dated 06-10-2020 attached as Annexure ----------A).

2- That, the appeal of the appellant was finally heard on 06-12-2021 and as such the ibid appeal was allowed in favour of the appellant by this Service Tribunal having a pray of the appellant which is reproduced as;

"On acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BPS-17), District Mardan. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."

(Copies of the judgment vide dated 06.12.2021 attached as Annexure.....B).

3- That, the concluding Para of the judgment ibid directing the respondents is also reproduced as under,

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be.

4- That, this august Service Tribunal directed the respondents to comply with the judgment vide Order sheet dated 10.05.2021 & 13.05.2021 respectively and submit proper implementation report in connected appeals as reflected on page first of the judgment ibid.
(Copy of the order sheet vide dated 10-05-2021 & 13.05.2021 respectively attached as Annexure.....C).

5- That, in response to above direction, the respondent Department submitted an implementation summary in connected appeals vide dated 20.05.2021 for perusal of this august Service Tribunal.
(Copy of the implementation summary vide dated 20.05.2021 attached as Annexure.....D).

6- That, at least & last the respondent Department submitted the impugned compliance notification issued vide dated 22.08.2022, which is totally in defiance of the judgment ibid while instead of its proper compliance as desired by this august Service Tribunal time & again and for which basically the appeals were accepted as prayed for.
(Copy of the impugned compliance notification vide dated 22-08-2022 attached as Annexure.....E).

7- That, in the analogy of above judgment, this august Service Tribunal passed a judgment vide dated 27.07.2021 in a Service Appeal bearing office No.8490/2020, in the favour of Mistress Nighat Sultana who is also likewise employee of the respondent Department.
(Copy of the judgment vide dated 27-07-2021 attached as Annexure.....F).

8- That, the respondent Department in pursuance to implementation of the above allowed Service Appeal has properly complied with in true letter & spirit by issuing the implementation notification vide dated 02-09-2021, without filing of any execution petition.
(Copy of the letter vide dated 02-09-2021 attached as Annexure.....G).

9- That, keeping the mala fide intention of the respondent Department by non-complying with the judgment ibid, the appellant having no other remedy but to file this execution petition for the favour of proper compliance of the judgment passed by this august Service Tribunal to the extent of the appellant.

It is therefore, most humbly prayed that on acceptance of the instant execution Petition, the respondents may kindly be directed to implement properly in like manner the judgment passed vide dated 06.12.2020 in Service Appeal No.923/2021 in true letter & spirit without wasting the precious time of august Service Tribunal as well as also to avoid unnecessary rounds of litigation. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Appellant

SHOAIB KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

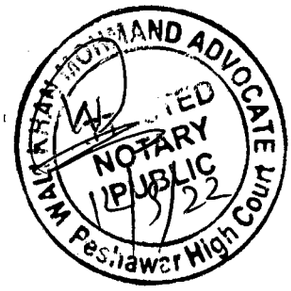
EXECUTION PETITION NO._____ /2022

SHOAIB KHAN VS HEALTH DEPARTMENT

AFFIDAVIT.

Stated on oath, that the contents of the accompanying **Execution Petition** are correct to the best of my knowledge and belief while nothing has been concealed from this Honorable Service Tribunal.

DEPONENT



CERTIFICATE:

Certify that no earlier Service Appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

Annex. B (7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR.

Appeal No. 16578/2020

Date of Institution ... 11.01.2021

Date of Decision ... 06.12.2021

Mr. Manzoor Ahmad, Drug Inspector (BPS-17) District Peshawar, under Transfer to the post of Pharmacist (BPS-17) DHQ Hospital KDA Kohat.
... (Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa Peshawar and two other.
...(Respondents)

Present.
Mr. Noor Muhammad, Advocate. ... For appellant.

Mr. Muhammad Adeel Butt, Addl. Advocate General ... Forrespondents.

MR. AHMAD SULTAN TAREEN ... CHAIRMAN
MR. SALAH-UD-DIN, ... MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- By the appeal described above in the heading and eight other appeals bearing No. 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021,5187/2021, the appellants have invoked the jurisdiction of this

Kohat Mr. Z. Mashwani

ATTESTED
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Service Tribunal
Peshawar

ATTESTED

Tribunal to challenge their transfers from the post of Drug Inspectors/Drug Analyst to the post of Pharmacists with the prayer copied herein below:-

> *"On acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BPS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."*

2. This single judgment shall stand to dispose of all the 09 appeals in one place as in all of them common questions of facts and law are involved.

3. The factual account as given by the appellant in Memo. of Appeal has been edited for the purpose of this judgment. The appellants in Appeals No. 16578/2020, 10301/2020, 10535/2020 16579/2020, 16580/2020 923/2021, 1559/2021, 4821/2021, 5187/2021, are holders of the post of Drug Inspector in pursuance to their appointment made on the said post in due process. Appellant in Appeal No. 16580/2020 is holder of the post of Drug Analyst. The respondent department transferred them from their respective posts held by them in the relevant cadre to the post of Pharmacist. They through their respective departmental appeals have challenged their transfer orders before the departmental appellate authority but they received no response of their departmental appeals. Consequently, they have preferred their service appeals respectively, as

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enumerated herein above, for judicial review of the impugned transfer orders. The copies of the appointment orders of appellants, last transfer order within cadre and of impugned order followed by the copies of departmental appeals are available on record as annexed with their respective Memorandum of Appeals. The appellants have disputed the transfer as made vide impugned order on the ground that in terms of service rules for them, their appointment, promotion and transfer is governed by notification dated 09.04.2006 of the Government of Khyber Pakhtunkhwa Health Department quite differently from the Pharmacists. The copy of the said notification as annexed with the appeal is also available on file. The appellants amongst other grounds have urged that the impugned notification of their transfer is against law, facts, norms of natural justice and material on record and being not tenable is liable to be set aside to the extent of appellants and private respondents; and that the appellants were not treated by the respondents in accordance with law/rules on the subject in utter violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

4. On notice of appeal, the respondents turned up, joined the proceedings and contested the appeal by filing written replies stating therein that the appellants have got no cause of action or locus standi; that the appeals are against the prevailing law and rules and are not maintainable in present form. They with several factual and legal

ATTESTED

objections submitted that the appeals having been filed with malafide intentions are liable to be dismissed as the impugned transfer notification has been issued in accordance with Section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.

5. We have heard the arguments and perused the record.

6. The arguments of the parties revolve around their submission in writing made in Memorandum of appeal and written reply respectively and discussed herein above.

7. Learned counsel for the appellant has argued that the impugned notification dated 06/10/2020 is against the law, facts, norms of natural justice and materials on the record; that the appellant has not been treated by the respondents in accordance with law and rules on the subject and as such the respondents has violated Articles-4 and 25 of the Constitution of Pakistan; that the impugned notification dated 06/10/2020 has been issued by the respondent No. 2 in arbitrary and malafide manner; hence, not tenable and liable to be set aside; that the impugned notification dated 06/10/2020 is based on discrimination, favoritism and nepotism and is not tenable in the eyes of law; that the impugned notification dated 06/10/2020 has neither been in the best interest of the public service nor in exigencies of service; that through impugned notification, the appellants has been transferred against the wrong cadre/post; that

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Peshawar

(12)

through impugned notification is violation of clause-I and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa.

8. Learned AAG on behalf of respondents rebutted the arguments advanced by learned counsel for the appellants and has argued that the appellants are employees of Health Departments selected through Public Service Commissions of Khyber Pakhtunkhwa but their performance is questionable on the basis of their monthly progress reports compiled on the basis of set indicators besides their facing inquiries; that the appellants have already completed their normal tenure of two years and it is the discretion of the competent authority to transfer a civil servant at anytime even outside of the province; that no terms and conditions of their service have been violated; that the impugned notification is based on law, Rules and principles of natural justice; that there is no malafide on the part of respondents towards the appellants; that the application are transferred in accordance with law in the public interest; that it is the fitness of things to post a right person at a right place to achieve good governance and to enhance public service delivery; that the appellants have been transferred within their cadre within the same directorate even if they have been transferred in ex-cadre, the same is also covered under the second proviso of Act; that the notification issued after observance of all relevant rules/policy.

ATTESTED

ATTESTED

9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. The appellants inconsequence of their transfer have been posted against non-cadre posts. The main defense of the respondents lies in their reply to para-4 of the memorandum of appeal. It has been stated vide para-4 of appeal that by the service rules dated 09/04/2006, the cadre of the appellants is completely different from that of service rule assigned for pharmacists. The reply of the respondents to said para is copied below:

"The Service Rules does not carry any kind of assignment to a cadre but it specifies the method of recruitment and promotion prospects which is otherwise protected after the merging of cadre. Although transfer is not a punishment but to make such like people punctual, subservient to the public and to overcome the deficiency of efficient of hardworking officer to post right person on right place, the three cadres i.e. hospital pharmacist, drug inspector and analyst having same basic qualification as required for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so any drug inspector or an analyst at DTL (who are the cadre of the 04 to 05 persons) can be transferred making them liable to work in hospital under the close

ATTESTED

supervision of hospital administration and vice versa. Those who are transferred from hospital to work in the field as drug inspector are tremendously working, removing the bottlenecks and highlighting a lot of malpractices previously done by their predecessor who have been sacked from field duty, In other similar cases, the drug inspectors who are sacked are under probe at Provincial Inspection Team and other fora".

10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?

11. For answer to the formulated questions, prior determination of the legal status of the appellants and the respondents is necessary, as far as their functional duties are concerned. It is pertinent to observe that the Government of Khyber Pakhtunkhwa made the Khyber Pakhtunkhwa Drug Rules, 1982 in exercise of powers conferred by Section 44 of Drug Act, 1976. Rule-2 of ibid rules provides definitions of different words and phrases. The expression "Act" in the said rules means the Drug Act, 1976. Analyst means an Analyst appointed by the Government under the Act. Inspector means an Inspector appointed by the Government under the Act. Board means the Quality Control Board for the Khyber Pakhtunkhwa Province set up under Section 11 (of the Act). Pharmacy

ATTESTED

means a shop, store or place where drugs are compounded or prepared on prescription. Part-II of ibid rules relates to appointment and functions of enforcement staff. Sub Rule-(1) of Rule-3 in Part-II of the said Rules provides that an Inspector and Analyst shall submit monthly returns in Form-1 & Form-2 respectively, to the Board and a' Summary on the overall situation of quality control in the area under their respective jurisdiction and the board shall maintain such information in a manner as to monitor the quality of all the drugs sold and to keep watch on the performance of all manufacturers. Rule-4 provides qualifications etc of Inspector and Analyst. Accordingly, no person shall be appointed as Inspector unless he possess the degree in Pharmacy from University or other institutions recognized for this purpose by the Pharmacy Council of Pakistan and has at least one yeaf experience in the manufacture, sell, testing or analysis of drugs or in Drug Control Administration or in hospital or pharmacy. Sub Rule-(2) of Rule-4 provides the qualification for appointment as Analyst which is similar to that of the Inspector except experience which in case of Analyst is 05 years. The same rules i.e. of 1982 provide for duties of Inspectors and Analysts. From the given statutory expositions relating to the position of Drug Inspector and Drug Analyst, we have no hesitation to hold that the posts of Drug Inspector/Drug Analyst are statutory positions with authority of appointment vested in the Provincial Government. The Government of

ATTESTED

Khyber Pakhtunkhwa vide notification dated 09/04/2006 bearing No. SOH-III/10-04/05 issued in pursuance to the provisions contained in sub rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, laid down the method of recruitment, qualification and other conditions of service applicable to the posts specified in column-2 of the appendix. The qualification of Inspector in the appendix is similar to that of qualification provided under Sub-Rule-(1) of Rule-4 of Khyber Pakhtunkhwa Drug Rule, 1982. According to method of recruitment prescribed in column-5 of the appendix, the appointment to the post of Drug Inspector is to be made by initial recruitment while to the post of Chief Drug Inspector and Divisional Drug Inspector by promotion. The respondents in their reply vide para-4 as reproduced herein above have asserted with vehemence that there cadres i.e. Hospital Pharmacist, Drug Inspector and Drug Analyst having same qualification for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so Drug Inspector of Analyst at DTL (who are the cadre of 04 to 5 persons) be transferred making them liable to work in hospital under the close supervision of hospital administration. Those who are transferred from hospital to work in the field as Drug Inspector are tremendously working, removing the bottlenecks and

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

12. The reply of the respondents as discussed above revolves around the expediency of filling the Drug Regulatory posts by *inter se* transfer of the holders of the post of Drug Inspector/Drug Analyst and of Pharmacists by merger of their cadre to ensure the discipline and quality of performance purportedly for the public good. We are not supposed to doubt the intentions of the respondents for such expediency but at the same time, we have to see that such an expediency is in conformity to the law and rules on the subject. Article 240 of Constitution of Pakistan enshrines that subject to the Constitution, the appointments and conditions of service in the Service of Pakistan shall be determined by or under the Act of Parliament in case of the services of Federation and by or under the Act of Provincial Assembly in case of services of Province and posts in connection with affairs of the Province. In pursuance of this command of Constitution, the Provincial Service Laws i.e. the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rules made there-under are in place in general besides other Special Service laws for particular posts and services in connection with affairs of the Province. As already discussed above, the notification dated 09/04/2006 issued in pursuance to Sub Rule-(2) of Rule-3 of (APT) Rules, 1989 is there which laid down the method of recruitment, qualification and other conditions of service

ATTESTED

applicable to the posts of Drug Inspectors of different ranks. Thus, in presence of a legal instrument like notification dated 09/04/2006 having statutory barking, transfer of a Drug Inspector to an ex-cadre post to fill the resultant vacancy by transfer of a non-cadre officer is seemingly not credible. By the impugned order dated 06/10/2020, appellants holding the posts of Drug Inspector and one among them holding the post of Drug Analyst were transferred from their respective posts held by them in relevant cadre and posted as Pharmacist in a wrong cadre. The notification dated 06/04/2006 as far as column-5 of its appendix is concerned expressly provides for appointment of Drug Inspector through initial recruitment. With this position as to method of appointment of Drug Inspector, the post held by him cannot be filled by transfer or promotion from any other cadre albeit the person in the alien cadre may possess the qualification similar to the qualification of Drug Inspector. In holding so, we derive guidance from the law laid down by august Supreme Court of Pakistan in the case of Muhammad Sharif Tareen...vs... Government of Balochistan (2018 SCMR 54).In the ibid case, it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by Initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of Ali Azhar Khan

ATTESTED

Baloch...vs...Province of Sindh (205 SCMR 456), it was held as follows:

> "8. *The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance.*"

13. For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion.

(AHMAD SULTAN TAREEN)
Chairman

(SALAH-UD-DIN)
Member(J)

ANNOUNCED
06.12.2021

Date of Presentation of Application 02/02/2022
Number of Words 5200
Copying Fee 52/-
Urgent 6/-
Total 58/-
Name of Copyist
Date of Completion of Copy 02/02/22
Date of Delivery of Copy 02/02/22

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Annex. C 19

10.05.2022 Petitioner present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Learned AAG requested for a short adjournment in order to submit proper implementation report. Adjourned. To come up for implementation report on 13.05.2022 before S.B.

(Rozina Rehman)
Member (J)

13.05.2022 Petitioner in person present. Learned law officer is absent.

On 10.05.2022, learned Additional Advocate General had requested for a short adjournment in order to submit proper implementation report but today there is no body from the department present before the Tribunal, therefore, respondents are directed to appear in person and submit implementation report on the next date. Copy of this order sheet be sent to the Chief Secretary and Secretary Health Department Khyber Pakhtunkhwa Peshawar for information. To come up for implementation report on 23.05.2022 and attendance of respondents before S.B.

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Kalim Arshad Khan)
Chairman

Date of presentation of application
Number of words
Copying fee
Urgent
Total
Name of copyist
Date of complection of copy
Date of delivery of copy

Annex. D (20)

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: - IMPLEMENTATION OF THE JUDGMENT DATED 06-12-2021 PASSED IN APPEAL NO. 10301/2020 TITLED ASAD HALIMI V/S HEALTH DEPARTMENT & OTHERS IN LETTER AND SPIRIT.

Summary for Chief Minister, Khyber Pakhtunkhwa on the above captioned subject is placed below for approval, please.

(MUHAMMAD TAHIR ORAKZAI)
(SECRETARY HEALTH)
20.05.22

MINISTER HEALTH,
KHYBER PAKHTUNKHWA.

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.

PRINCIPAL SECRETARY TO CHIEF MINISTER,
KHYBER PAKHTUNKHWA.

Annex. (E) (21)

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 22nd August, 2022

NOTIFICATION

SOH-III/7-262/2022(Drug Inspector): In compliance of the Services Tribunal, Peshawar judgment dated 06-12-2021 in Service Appeal no 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halmi Chief Drug Inspector BS-19.	Chief Pharmacist (BS-19), KDA, Kohat.	Chief Drug Inspector (BS-19), District D.I Khan	Against the vacant post.
2.	Tayyab Abbass Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar.	Chief Drug Inspector (BS-19), District Abbottabad.	Against the vacant post.
3.	Amin ul Haq Senior Drug Inspector BS-18	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
4.	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar.	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17), District Peshawar.	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17), District Dir Lower.	Drug Inspector (BS-17), District Bannu.	Against the vacant post.
7.	Muhammad Shoaib Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.	Drug Inspector (BS-17), District Karak.	Against the vacant post.

-sd-
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst of even No and Date.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
3. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
4. Medical Superintendent, DHQ Hospital, concerned.
5. Medical Superintendent, Services Hospital, Peshawar.
6. District Health Officer concerned.
7. In-charge, Drug Testing Laboratory, Peshawar.
8. District Accounts Officer, concerned.

Annex. F (22)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 7781
Dated 22/7/2020

Appeal No. 8490 /2020

Mst. Nighat Sultana (Government Public Analyst, BPS 18) w/o Sabir Hayat r/o Hayatabad. Peshawar.

...Petitioner...

VERSUS

1. The Government of Khyber Pakhtunkhwa through chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Health Department, Government of Khyber Pakhtunkhwa, Peshawar.

...Respondents...

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SEVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO. SOH-III/10-4/2017 DATED 30/03/2020 AND IMPUGNED OFFICE ORDER NO. 6799-805/E-I DATED 18/05/2020 OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY RELEIVING THE PETITIONER FROM FOOD TESTING LABORATORY PESHAWAR AND TRANSFERRING HER TO DHQ HOSPITAL KDA KOHAT AS DISTRICT SPECIALIST PATHOLOGY

PRAYER IN PETITION:

On acceptance of the instant Appeal, this Honorable Tribunal may kindly be pleased to issue direction to the Respondents:

a. *Not to relieve the Petitioner from performing her duties as Government Public Analyst (BPS-18) at Food Testing Laboratory Peshawar.*
b. *Declare the Notification number SOH-III/10-4/2017 dated 30th March 2020 as illegal, without any force of law, void ab-initio hence liable to be set aside.*
c. *Declare office order no. 6799-805/E-I dated 18/05/2020 issued by respondent no. 2 as illegal, void ab-initio, without any force of law and hence liable to be set aside at once.*
d. *Declare Office Order No. 855/E-I Dated 19/06/2020 illegal void ab-initio*
e. *Any other relief not specifically prayed for but this August Tribunal deems fit may also be granted in favor of the Appellant.*

Re-submitted to-day and filed.
Registrar

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal

The Petitioner humbly submits:

23

Service Appeal No. 8490/2020

Date of Institution ... 22.07.2020

Date of Decision ... 27.07.2021

Mst. Nighat Sultana (Government Public Analyst, BPS-18) W/o Sabir Hayat R/o Hayatabad Peshawar. ... (Appellant)

VERSUS

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

MR. ABDULLAH SHAH
Advocate ... For Appellant

MR. MUHAMMAD ADEEL BUTT
Additional Advocate General ... For Respondents

MR. SALAH-UD-DIN ... MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Microbiologist (BPS-17) by recommendation of public service commission vide order dated 29-06-1992 and was posted as Microbiologist at the public analysis Lab Peshawar. Upon intervention of the honorable Peshawar High Court vide its judgment dated 29-03-2007, service rules for recruitment/ promotions in respect of employees of the Public Analysis Lab were issued vide Notification dated 15-11-2007 and in light of the said notification, the appellant was promoted to the post of Government Public Analyst (BPS-18) vide order dated 01-02-2009. During the course of her service, she was relieved of her services by respondent No. 3 and her services were placed at the disposal of DG Health Services vide order dated

30-03-2020 and the DG Health Services vide order dated 18-05-2020 posted her against the vacant post of District Specialist Pathology (BPS-18) at DHQ Hospital Kohat. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 19-05-2020, hence the instant service appeal with prayers that impugned orders dated 30-03-2020, 18-05-2020 and 19-06-2020 may be set aside and the appellant may be allowed to perform her duty as Government Public Analyst(BPS-18) at Food Testing Laboratory Peshawar.

02. Written reply/comments were submitted by respondents.

03. Learned counsel for the appellant has contended that the appellant has specifically been recruited for Food Testing Lab as a microbiologist and was promoted in that lab to the post of Government Public Analyst and she cannot be posted out of the cadre. He further contended that such transfer was made in utter violation of proviso of Section 10 of Civil Servant Act, 1973 and is illegal, against law and principles of natural justice. Learned counsel for the appellant argued that the appellant was promoted and posted on the post in compliance of the judgment of the honorable Peshawar High Court and such transfer would amount to contempt of the orders of the court. He further argued that the job description of Microbiologist and Pathologist are altogether different in nature, whereas the appellant is having decades of experience in her field has been transferred to a post that is completely different from what her real expertise and qualifications are. Learned counsel for the appellant explained that the impugned transfer orders does not explain as to what had necessitated such outrageous action taken by the respondents; that the transfer order was not made in the public interest, rather it was based on malafide, which is illegal and against all canons of justice. He further explained that the appellant had been selected for a specific job and she was not supposed to be transferred anywhere else. Learned counsel for the appellant prayed that on acceptance of the

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04. Learned Additional Advocate General appearing on behalf of respondent has contended that the impugned notification was issued in accordance with law and rule, as the competent authority was authorized under section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 to transfer a civil servant against any post even outside his/her cadre. He further contended that the appellant was posted against a related post as a stop-gap arrangement, however her terms and conditions would remain the same. Learned Additional Advocate General argued that the appellant is a qualified microbiologist which is very much related to pathology. Learned Additional Advocate General prayed that the instant appeal being devoid of any force, may be dismissed. Reliance was placed on 2017 SCMR 798.

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

06. A perusal of record would reveal that the appellant was initially appointed as Microbiologist (BPS-17) in Food Testing Lab Peshawar. It was on 31-01-2007 when a complaint was lodged to the Chief Justice Peshawar High Court for taking notice of wide spread adulteration of food items and the Worthy Chief Justice had taken notice of it in a Writ Petition No. 229/2007. The subject writ petition was disposed of vide judgment dated 29-03-2007, as Secretary Health present in the court stated at the Bar that Mst. Nighat Sultana has been given the charge of Govt. Public Analyst in Food Testing Lab, Peshawar as a stop-gap arrangement, as no officer in BPS-17 in Food Testing Lab is available to be promoted against the post of Govt. Public Analyst. The Secretary Health committed before the court that Health Department is making necessary amendments in the existing service rules for the post of Govt. Public Analyst and the requisite amendments shall be done within a period of two months. It was noted that the Health Department in pursuance of their commitments, brought amendments in rules vide Notification dated 15-11-2007 and

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[illegible] promoted to the post of Govt. Public

07. Record reveals that microbiology was introduced in Food Testing Lab in the year 1992 by induction of the appellant specifically for the purpose of food testing, by virtue of which the appellant could not be transferred elsewhere, hence the impugned transfer order is against the proviso of section 10 of Civil Servant Act, 1973, which states that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region. Moreover there is a lot of difference between the job description of a Microbiologist and pathologist, as microbiology is the study of microscopic organisms, which may be unicellular, multi-cellular or a-cellular, whereas pathology is the branch of medical sciences that deals with the examination of organs, tissues and body fluids for the diagnosis of disease, so in view of the situation, the transfer of appellant from her own position to that of pathology is illogical and it would not be possible for the appellant to do justice with her job.

08. We are of the considered opinion that the impugned transfer order was made in violation of proviso of Section 10 of Civil Servant Act, 1973 as well as the said order was not made in the public interest. The appellant was specifically recruited for the said post at Food Testing Lab, who is not supposed to be transferred elsewhere.

09. In view of the foregoing discussion, the instant appeal is accepted and the impugned orders dated 30-03-2020, 18-05-2020 and 19-06-2020 are set aside. The appellant is restored to her original post of Government Public Analyst. Parties are left to bear their own costs. File be consigned to record room.

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
27.07.2021

(SALAH-U-DIN)

(ATIQ UR REHMAN WAZIR)

Annex (G) (27)

GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 02nd September, 2021

NOTIFICATION.

No. SOH-III/10-4/2017. In compliance with the Khyber Pakhtunkhwa, Service Tribunal's Peshawar judgement, dated 27-07-2021 in Service Appeal No. 8490/2020, the Health Department's Notification of even number, dated 30-03-2020, in respect of Mst. Nighat Sultana, Govt. Public Analyst (BS-18), Public Health Food Analysis Labortary Hayatabad Peshawar, is hereby withdrawn.

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst of even No and Date.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. Incharge, Food Testaing Labortary, Hayatabad, Peshawar.
4. The Deputy Director (I.T) Health Department.
5. PS to Secretary Health, Khyber Pakhtunkhwa.
6. Officer concerned.

(Naseer Ahmad)
SECTION OFFICER-III

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO: _____ OF 2021

SHOAIB KHAN (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

HEALTH Deptt & others (RESPONDENT) (DEFENDANT)

I/We Mr. Shoaib Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. 12 / 09 /2022

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5

UMAR FAROOQ
&
WALEED ADNAN

M. AYUB
ADVOCATES

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