FORM OF ORDER SHEET

Court of _____

Case No.- 1654/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/11/2022	The appeal of Mr. Manzoor Ahmad presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1654 /2022

MANZOOR AHAMD 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:

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL No. 1654 /2022

Manzoor Ahmad Drug Inspector (BS-17) District Peshawar.

.....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

APPEAL UNDER SECTION -4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED EXECUTION NOTIFICATION DATED 22.08.2022 IN COMPLIANCE TO KP- SERVICE TRIBUNAL JUDGMENT PASSED VIDE DATED 06.12.2021 WHEREBY THE RESPECTIVE PRAYER OF THE APPELLANT HAS NOT BEEN PROPERLY IMPLEMENTED IN ITS TRUE LETTER & SPIRIT AND THE APPELLANT HAS BEEN FRESHLY POSTED/TRANSFERRED IN UTTER VOIALTION OF THE JUDGMENT IBID READ WITH JUDGMENT 2022 S C M R 439 & W.P No.3508-P/2022 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED EXECUTION/COMPLIANCE NOTIFICATION DATED 22.08.2022 MAY VERY KINDLY BE SET ASIDE TO THE EXTENT OF THE APPELLANT AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO IMPLEMENT PROPERLY THE JUDGMENT PASSED DATED 06.12.2021 READ WITH JUDGMENT 2022 S C M R 439 & W.P No.3508-P/2022, ACCORDING TO THE RESPECTIVE ACCEPTED PRAYER OF THE APPELLANT IN ITS TRUE LETTER & SPIRIT.

ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:-

1- That, the appellant filed Service Appeal bearing office No. 16578/2020 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 and decided vide judgment dated 06-12-2021, by setting aside the impugned transfer notification and as such the ibid appeal was accepted with its respective prayer in favour of the appellant by this Service Tribunal, while the prayer of the appellant is reproduced as under;

"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."
(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, the respondents instead of compliance of the judgment dated 06.12.2021 to the respective prayer of the appellant, issued an impugned fresh transfer notification vide dated 22.08.2022 under the garb of compliance, through which the appellant has been once again posted /transferred to District Dir Lower in utter violation of the judgment ibid.
(Copy of the impugned compliance Order vide dated 22-08-2022 attached as Annexure.....C).

5- That, the appellant feeling aggrieved from the impugned compliance notification dated 22.08.2022, preferred Departmental appeal vide dated 24-08-2022, before the appellate authority regarding the matter concerned but the same has not been responded/decided till the expiry of statutory period of ninety days so far.
(Copy of the Departmental Appeal dated 24-08-2022 attached as Annexure.....D).

6- That, the appellant having no efficacious remedy other than to prefer the instant Service Appeal on the following grounds amongst the others.

GROUNDS:

A- That, the impugned compliance Notification dated 22.08.2022 issued by the respondent concerned is against the law, facts, norms of natural justice, materials on the record and unconstitutional, hence not tenable and liable to be set aside.

B- That, the impugned notification dated 22.08.2022, issued under the garb of compliance by the respondent concerned, is in arbitrary & malafide manner, hence not tenable and liable to be set aside to the extent of the appellant.

C- That, the impugned notification dated 22.08.2022, issued under the garb of compliance by the respondent concerned, is totally based on discrimination, favoritism and nepotism, hence not enable in the eye of law.

D- That, the impugned notification dated 22.08.2022, issued under the garb of compliance by the respondent concerned, has neither been in the interest of public nor in the exigency of service, hence not tenable and liable to be set aside.

E- That, the appellant has been posted/transferred through impugned compliance Notification dated 22.08.2022, in utter violation & disregard of the judgment dated 06.12.2021, being defiance of the judgment ibid, therefore the same is not tenable and liable to be set aside.

F- That, the impugned compliance Notification dated 22.08.2022, is nothing but just to harass the appellant and to pressurize for not sustaining against the wrong doing.

G- That, the impugned compliance Notification dated 22.08.2022, is also in utter violation of the cited Judgment 2022 S C M R 439 of

the Apex Court, by donning the cloak of Competent Authority while the Apex Court has held in its judgment as that ***"there is a need to put a stop to the use of illusive & elusive term- the Competent Authority without the disclosure of the Competent Authority's name & designation.***
(Copy of the cited judgment attached as Annexure.....E).

H- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as "***PLD 2010 SC 483***', the Honorable Supreme Court of Pakistan as follow;

"When the Supreme Court deliberately and with intention of setting the law, pronounces the question, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan. It cannot be treated as mere obiter dictum.

I- That, the impugned compliance Notification dated 22.08.2022, is also in defiance of the instructions issued by Judicial Wing of the Establishment Department which has been circulated vide dated 14.02.2022, in pursuance to orders of the cited judgment of the Apex Court.
(Copy of the letter vide dated 14.02.2022 attached as Annexure.....F).

J- That, the appellant has not been treated by the respondents in accordance with law and rules on the cited subject and as such the respondents violated the Articles 4, 25 & 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

K- That, the appellant also filed a Writ Petition No.3508-P/2022, regarding the proper implementation of cited judgment 2022 S C M R 439 on the matter of impugned compliance notification to the extent of Competent Authority, in which the Honorable High Court Peshawar advised vide Para 6 of the judgment ibid, that the Worthy Service Tribunal is very much clothed with the jurisdiction under Article 190 of the Constitution of the Islamic Republic of Pakistan, 1973 and therefore matter could more validly be agitated before this Service Tribunal being a Competent Forum.
(Copy of the ibid Writ Petition attached as Annexure.....G).

L- That as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as **PLD 2011 SC 927**, the Honorable Supreme Court of Pakistan has dilated upon the principle of administration of justice as under,

"when a procedure has been provided for doing a thing in a particular manner that thing should be done in that matter and in no other way or it should not be done at all;

indeed it impliedly prohibits doing of thing in any other manner; the compliance of such thing in no way could be either ignored or dispensed with. If the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, court can interfere.

M- That, the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

Dated 22-11-2022.

Appellant
Manzoor Ahmad

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL No._____ /2022

MANZOOR AHMAD VS HEALTH DEPARTMENT

AFFIDAVIT.

I, Manzoor Ahmad, Drug Inspector (BS-17) Health Department Khyber Pakhtunkhwa, do hereby solemnly affirm that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court/Tribunal.

DEPONENT

-7-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

C.M NO._____/2022

IN

SERVICE APPEAL No._____ /2022

MANZOOR AHMAD VS HEALTH DEPARTMENT

APPLICATION FOR SUSPENSION OF OPERATION OF THE IMPUGNED COMPLIANCE NOTIFICATION DATED 22.08.2022 TO THE EXTENT OF THE APPPLICANT TILL THE FINAL DISPOSAL OF THE ABOVE TITLED APPEAL.

R/SHEWETH:

1- That, the above mentioned appeal along with this application has been filed by the appellant before this august Service Tribunal in which no date has been fixed so far.

2- That, the appellant filed the above mentioned appeal against the impugned compliance notification dated 22.08.2022, whereby the appellant has been freshly transferred/posted in utter violation of the Judgment of this Service Tribunal passed vide dated 06.12.2021, instead of implementing the respective prayer of the appellant in the judgment ibid.

3- That, all the three ingredients necessary for the stay is in the favor of the appellant.

4- That, the impugned compliance notification dated 22.08.2022 has been issued deliberately, having malafide intention of harassment and is in utter disregard of the Judgment dated 06.12.2021, announced by this august Tribunal.

It is therefore, most humbly prayed that on acceptance of this application, the operation of the impugned compliance notification dated 22.08.2022 to the extent of appellant may very kindly be suspended till the final disposal of the above titled service appeal.

Dated 22-11-2022.

Applicant

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

"A" -8-

GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT
Dated the Peshawar 06th October, 2020

NOTIFICATION

No. SOH-III/10-1/2020. The Competent Authority is pleased to order following postings/transfers of the Officers with immediate effect in the public interest.

S.No.	Name & Designation	From	To
1	Mr. Inam Ul Haq, Senior Pharmacist (BS-18)	Services Hospital Peshawar	Deputy Director/Senior Pharmacist (BS-18) DG [illegible] PS against the vacant post
2	Mr. Arif Hussain, Analyst (BS-18)	Drugs Testing Laboratory, Peshawar	Sr. Pharmacist (BS-[illegible] Services Hospital Peshawar vice St. No.1
3	Miss. Naila Basher, Senior Pharmacist (BS-18)	Govt. MCC, DG, DG & PS.	Analyst Drug Testing Laboratory Peshawar vice Sr. No.2
4	Mr. Fazle Haq, Pharmacist (BS-17)	Drugs Testing Laboratory, Peshawar	DG, DC &PS against the vacant post of Pharmacist/DI/Chemist (BS-17)
5	Mr. Fawad Alam, Pharmacist (BS-17)	Moulvi Ameer Shah Memorial Hospital Peshawar	DG, DC &PS against the vacant post of Pharmacist/DI/Chemist (BS-17)
6	Mr. Mishbah Ullah Jan Pharmacist (BS-17)	Bacha Khan Medical Complex, Swabi	Drug Inspector (BS-17) Mardan vice Sr. No. 17
7	Mr. Amin Ul Haq, Sr. Drug Inspector (BS-18)	District Mardan	Senior Pharmacist (BS-18) KDA Hospital Kohat against the vacant post.
8	Mr. Abdur Rauf, Pharmacist (BS-17)	DHQ Hospital Mardan	Drug Inspector (BS-17) DHQ Hosptial Mardan vice Sr. No 8
9	Mr. Shehzada Mustafa Durg Inspector (BS-17)	District Mardan	Pharmacist (BS-17) DHQ Hospital Mardan vie Sr. No. 8
10	Mr. Niamatullah, Pharmacist (BS-17)	DHQ Hospital Dir Lower.	Drug Inspector (BS-17) [illegible] against vacant post.
11	Mr Zia Ullah, Drug Inspector (BS-17)	Dir Lower.	Pharmacist (BS-17) [illegible] Hospital Dir Lower vice Sr. No. 10
12	Mr. Rohullah, Drug Inspector (BS-17)	District Charsadda	Assistant Director (BS-17) DG, DC & PS against the vacant post.
13	Mr. Imran Burki, Drug Inspector (BS-17)	District D.I.Khan	Drug Inspector (BS-17) Lakki Marwat Vice Sr. 14

14	Mr. Ibrar Khan Drug Inspector (BS-17)	District Lakki Marwat	Drug Inspector (BS-17) Karak vice Sr. No. 15.
15	Mr. Muhammad Saleem Drug Inspector (BS-17)	District Karak	Drug Inspector (BS-17) D.I.Khan vice Sr. No. 13.
16	Mr. Manzoor Khattak, Drug Inspector (BS-17)	District Peshawar	Pharmacists (BS-17) KDA Kohat against the vacant post.
17	Mr. Shoaib Drug Inspector (BS-17)	District Mardan	Pharmacists (BS-17) BIMC Swabi against the vacant post.

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst of even No. and Date

Copy forwarded to the:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa. Peshawar.
3. Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar
4. In charge, Drug Testing Laboratory, Hayatabad, Peshawar.
5. Medical Superintendent Services Hospital, Peshawar,
6. Medical Superintendent Moulvl Ameer Shah Meyorial Hospital. Peshawar.
7. Medical Superintendent, DHQ Hospital, concerned.
8. Hospital Director, BIMC Swabi.
9. District Health Officer concerned,
10. District Accounts Officer concerned
11. The Deputy Director
12. PS to Minister of Health
13. PS to SecretaryHealth
14. PA to

"B" -10-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 657
Dated 11/11/2021

APPEAL NO. 16578 /2021

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

VERSUS

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

..... RESPONDENTS

APEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 06.10.2020 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF DRUG INSPECTOR (BPS-18), DISTRICT PESHAWAR TO THE POST OF PHARMACIST (BS-17), DHQ HOSPITAL KDA, KOHAT IN UTTER VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filedto-day
Registrar
11/11/2021

PRAYER:

That 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 transfer the appellant from the post of Drug Inspector (BS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

1- That appellant is the employee of respondent Department and is appointed as Drug Inspector (BPS-17) through proper

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

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

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

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

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.

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 dire*

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 year 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 above 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

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 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 ... through Public Service Commission, were merged to obviate ... 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

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 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 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

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 in 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**

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
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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.

"D" -24-

PS/C.S Khyber Pakhtunkhwa
Diary No. 2607 W/E
Date: 24-08-22

To,

The Worthy Chief Secretary,
Khyber Pakhtunkhwa Peshawar.

Subject: ***DEPARTMENTAL APPEAL FOR PROPER IMPLEMENTATION OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL'S JUDGMENT DATED 06/12/2021 ANNOUNCED IN SERVICE APPEAL NO.16578 IN LIGHT OF JUDGMENT DATED 30.12.2021 PASSED BY HONORABLE SUPREME COURT OF PAKISTAN IN C.A No.62-K IN TRUE LETTER & SPIRIT.***

Respected Sir,

In pursuance to the judgment announced by Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar vide dated 06/12/2021, on the subject note above, the undersigned humbly submits as follow.

1) *That, the august Service Tribunal accepted Service Appeal No.16578, in respect of undersigned and set aside the transfer order in its judgment passed vide dated 06.12.2021.* ***(Copy of the judgment dated 06.12.2021 attached as Annexure "A").***
2) *That, in compliance to above judgment, Health Department submitted an impugned compliance notification issued vide dated 22.08.2022, to the august Service Tribunal in violation of judgment ibid.* ***(Copy of the notification vide dated 22.08.2022 attached as Annexure "B").***
3) *That, the above impugned compliance order is also violative of the Judgment dated 30.12.2021, passed by Honorable Supreme Court of Pakistan in C.A No.62-K by not disclosing the designation & name of the Competent Authority being an illusive & elusive term.*
4) *That, in this regard the Judicial Wing of the Establishment Department has already issued crystal clear instructions vide dated 14.02.2022, to comply with the judgment in its true letter & spirit.* ***(Copy of the letter vide dated 14.02.2022 attached as Annexure "C").***

Keeping in view entire of the above, your kind honor is hereby requested to please review the impugned execution order issued in compliance of Service Tribunal's judgment as well as to rectify the same in light of judgment passed by Honorable Supreme Court of Pakistan in C.A No.62-K, which has a binding effect on the all state's functionaries/Judicial Authorities.

(Relevant Copies Enclosed).

MANZOOR AHMAD,
Provincial Drug Inspector,
District Peshawar.

1) *Registrar Honorable Peshawar High Court Peshawar.*
2) *Registrar Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar.*

For information & necessary action please.

MANZOOR AHMAD,
Provincial Drug Inspector,
District Peshawar.

"E" -25-

2022 SCMR 439

[Supreme Court of Pakistan]

Present: Qazi Faez Isa and Amin-ud-Din Khan, JJ

PROVINCE OF SINDH and others---Petitioners

Versus

SHAHZAD HUSSAIN TALPUR---Respondent

Civil Petition No. 407-K of 2019, decided on 30th December, 2021.

(Against the judgment dated 15.03.2019 passed by the Sindh Service Tribunal at Karachi in Service Appeal No. 815/2017)

(a) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---

----R. 4(1)---Sindh Public Service Commission (Functions) Rules, 1990, R. 3(1)(i)---Special Auditor, Cooperative Societies---Appointment, legality of---Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission')---Special Auditor was a grade 17 post and the Secretary, Cooperative Societies was not authorized to either select or appoint a person in Grade 17.

Perusal of the original file and documents pertaining to the appointment of the respondent as Special Auditor, Cooperative Societies showed only the relevant notification appointing the respondent; there is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. The respondent was pre-selected and appointed by the Secretary, Cooperative Societies and this was done without making him take any test and/or interview.

The Secretary issued the notification appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent authority. Secretary also did not disclose that he himself was the competent authority in respect of appointments to a Grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from Grade 17 to Grade 16, and, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the notification and left out the names shared between them -'Mir' and 'Talpur'.

Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission'). Special Auditor was a Grade 17 post and the Secretary was not authorized to either select or appoint a person in Grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Respondent was not selected by the Commission yet he was appointed as Special Auditor, and, it would not make a difference even if it be accepted that the post of Special Auditor was in Grade 16 because selection to Grade 16 posts was also to be done by the Commission. Appointment of respondent as Special Auditor was patently illegal.

(b) Civil service---

----Appointment---Use of the term "competent authority" in notifications, orders, office memorandums, instructions, letters and other communications---Deprecated---Using the term 'competent authority' but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them.

It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed.

The use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

There is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, all the Provincial Governments, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.

Saulat Rizvi, Additional Advocate-General, Sindh, Ghulam Rasool Mangi, Advocate-on-Record, Ali Gul Sanjrani, Deputy Secretary and Abdul Latif Qazi, Deputy Registrar for Petitioners.

Mukesh Kumar G. Karara, Advocate Supreme Court along with Respondent and M. Iqbal Ch., Advocate-on-Record (absent) for Respondent.

Date of hearing: 30th December, 2021.

JUDGMENT

Qazi Faez Isa, J. This petition has been filed challenging the judgment of the Sindh Service Tribunal at Karachi ('the Tribunal'), which allowed the respondent's appeal and set aside the order dismissing him from the position of Special Auditor in the 'Cooperation Department'. The learned Additional Advocate-General, Sindh ('AAG') says that the 'Cooperation Department' is another name for the Cooperative Department. However, he states that the Sindh Government Rules of Business, 1986 refers to the department as the Cooperative Department. The petitioners are well advised to refer to departments by the names mentioned in the said Rules, and not to cause needless confusion.

2. The learned AAG states that the respondent was terminated from service because he was illegally selected and appointed to the post of Special Auditor by the Secretary of the department. This post could only be filled-in by inviting applicants through advertisements which set out the eligibility criteria and testing their abilities/competence by the Sindh Public Service Commission ('the Commission'). The Commission would then recommend the candidate who had attained the highest marks for appointment. Referring to the Sindh Public Service Commission (Functions) Rules, 1990[1] ('the Commission's Rules') he states that the position of Special Auditor is a grade 17 position and as per the Commission's Rules the selection to a grade 17 position can only be done by the Commission. To support his contention that the position of Special Auditor is a grade 17 position the learned AAG has referred to the Budget Books of the two years preceding the respondent's appointment which show that Special Auditor is a grade 17 position. The learned AAG states that the respondent was appointed by Mr. Ijaz-ul-Haq Talpur ('the Secretary'). However, before appointing the respondent the Secretary downgraded the position of Special Auditor to a grade 16, which he did because a Secretary is authorised to make grade 16 appointments, as provided in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974[2] ('the Appointment Rules'). The learned AAG submits that, even if it be conceded that the position of Special Auditor was a grade 16 position then too selection to this post had to be made by the Commission in terms of Rule 3(1)(i) of the Commission's Rules.

3. The petitioners initially contended that the Secretary was the respondent's brother but in the absence of such proof the learned AAG withdrew this allegation. However, the learned AAG points out that the Secretary and the respondent resided together at the same address which was E-92, Block-II, Pakistan Employees Cooperative Housing Society, Karachi (as confirmed by their identity cards) and there was a close nexus between them. Therefore, the Secretary had a conflict of interest and should

not have appointed the respondent, but he did not disclose his connection and resultant conflict, and did not obtain permission to appoint the respondent. He submits that the respondent was appointed vide notification dated 10 May 2013 ('the Notification') as Special Auditor and this was done by concealing the identities and the connection between the Secretary and the respondent. To appreciate this contention the Notification appointing the respondent is reproduced hereunder:

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COOPERATION DEPARTMENT GOVERNMENT OF SINDH

Karachi dated the 10th May, 2013

NOTIFICATION

N.O. S.O. (C-II)1-112/2013. On the recommendation of the Departmental Selection Committee and with the approval of the competent authority, Mr. Shahzad Hussain son of Ghulam Rasool is hereby appointed as Special Auditor, Cooperative Societies in Cooperation Department (BS-16) i.e. Rs. 10000-800-34000 on regular basis with immediate effect.

On his appointment he is posted as Special Auditor, Cooperative Societies Hyderabad against an existing vacancy with immediate effect.

SECRETARY TO THE GOVERNMENT OF SINDH

The learned AAG says that the Notification refers to 'Shahzad Hussain', however, the respondent's name (or complete name) was 'Mir Shahzad Hussain Talpur', which was also the name under which he had filed the appeal before the Tribunal. He further submits that the Secretary himself was the designated competent authority in respect of making appointments to grade 16 positions but the Notification did not disclose this and the Secretary also did not disclose his name under his signature. Structuring the Notification in this manner, and by concealing the designation and name of the competent authority, enabled the Secretary to illegally appoint the respondent.

4. The learned AAG next contends that the respondent was dismissed from service on 10 February 2014 and the respondent belatedly filed departmental appeal on 2 November 2017. Therefore, since the departmental appeal was filed well beyond the prescribed thirty days period the Tribunal should have dismissed the appeal filed before it on this ground alone. However, the belated filing of the departmental appeal was condoned by categorizing the notification dismissing the respondent from service as a void order and that such a void order could be assailed at any time. The learned AAG submits that the order dismissing the respondent from service was passed in accordance with the law and could not be categorised as a void order. And, having entertained the appeal the Tribunal held that since in an identical case the same relief was granted it could not be denied to the respondent, which the learned AAG says was not correct because the referred case was in respect of lower grade employees who were not required to be selected by the Commission.

5. The learned Mr. Mukesh Kumar Karara represents the respondent and supports the impugned judgment. He states that the respondent and the Secretary were not brothers and it was a coincidence that they were living at the same address. He submits that the respondent met the requisite criteria mentioned in the advertisement issued by the Cooperative Department and he could not be penalized because of any alleged illegalities committed by the Department in appointing the respondent.

6. We have heard the learned counsel and with their assistance also examined the documents on record. We had directed the petitioners (vide order dated 20 December 2021) to produce the original file and documents pertaining to the appointment of the respondent to ascertain how he came to be appointed as Special Auditor. Such file/documents have been examined by us and the learned counsel for the respondent and contain only the Notification appointing the respondent. There is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. It is clear that the respondent was pre-selected and appointed by the Secretary and this was done without making him take any test and/or interview.

7. The Secretary issued the Notification dated 10 May 2013 appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent

authority. The Secretary also did not disclose that he himself was the competent authority in respect of appointments to a grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from grade 17 to grade 16. And, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the Notification and left out the names shared between them - Mir and Talpur.

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8. The respondent was terminated from service vide notification dated 10 February 2014, which is reproduced hereunder:

COOPERATION DEPARTMENT GOVERNMENT OF SINDH

Karachi dated the 10th February, 2014

NOTIFICATION

No. SO(C-II)1(16)/2008. With the approval of the competent authority the services of Mr. Shahzad Hussain, Special Auditor Cooperative Societies (BS-16) Hyderabad are hereby terminated with immediate effect on the grounds that the post of Special Auditor Cooperative Societies (BS-16) is to be filled through Sindh Public Service Commission and the above said post has not taken from the purview of Sindh Public Service Commission at the time of appointment of Mr. Shahzad Hussain by the Competent Authority i.e. Chief Minister Sindh.

(ALI AHMED LUND)

SECRETARY TO THE GOVERNMENT OF SINDH

The reason given for terminating the respondent from service was that only a person selected by the Commission could be appointed to the position of Special Auditor and that the Secretary was not the competent authority to appoint the respondent. Therefore, since the selection and the appointment of the respondent was illegal he was terminated from service.

9. To determine whether a Special Auditor could be selected by the Cooperative Department and whether the person selected could be appointed by the Secretary we need to consider the applicable law and rules. The Sindh Civil Servant Act, 1973[3] governs the appointment of those in 'the service of Pakistan in connection with the affairs of the Province of Sindh'.[4] Section 5 of the Sindh Civil Servants Act, 1973 states, that:

> 5. Appointments.---Appointments to a civil service or a civil post in connection with the affairs of the Province shall be made in the prescribed manner by Government or by a person authorised by it in that behalf.[5]

Rule 4 of the Appointment Rules,[6] made pursuant to the Sindh Civil Servants Act, 1973 prescribes, that:

> 4. (1) The authorities competent to make appointment to the various posts shall be as follows:

S.No.	Posts	Appointing Authority
6.	Posts sanctioned in Basic Scale-16	Secretary concerned.

10. The Sindh Public Service Commission Act, 1989[7] was enacted to establish the Sindh Public Service Commission. The functions of the Commission are stipulated in section 7, the relevant portion whereof, is reproduced hereunder:

> 7. Functions of the Commission.---The functions of the Commission shall be-
>
> (i) to conduct tests and examinations for recruitment for initial appointment to -
>
> (a) such posts connected with the affairs of the Province of Sindh;

Pursuant to the Sindh Public Service Commission Act, 1989 the Sindh Public Service Commission (Functions) Rules, 1990[8] were enacted, rule 3(1)(i) whereof stipulates, that:

-29-

3. (1) The Commission shall, subject to other provisions of these rules, conduct tests for initial recruitment to-

(i) civil posts connected with the affairs of the Province in basic pay scale 11 to 22 except those specified in the Schedule;

11. The abovementioned laws stipulate that in respect of higher grades it is the Commission which selects candidates, and does so after conducting requisite tests. A Special Auditor was required to be selected by the Commission. The respondent was not selected by the Commission yet he was appointed as Special Auditor. And, it would not make a difference even if it be accepted that the post of Special Auditor was in grade 16 because selection to grade 16 posts is also to be done by the Commission.

12. Special Auditor was a grade 17 post and the Secretary was not authorized to either select or appoint a person in grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Assuming, for the sake of argument alone, that the Secretary could have selected and appointed a Special Auditor it could only be after conducting the requisite departmental test/interview of all applicants, but this too was not done.

13. The appointment of the respondent as Special Auditor was patently illegal. The learned Mr. Mukesh Kumar Karara concedes that appointment to the post of Special Auditor was to be made after selection of the candidate by the Commission. In these circumstances it is not understandable how the Tribunal could categorise the respondent's termination order to be a void order. The Tribunal overlooked the relevant laws (mentioned above) and disregarded the statutory period within which the departmental appeal had to be filed by the respondent. The Tribunal's impugned judgment is clearly not sustainable and has to be set aside.

14. We are constrained to observe that the Secretary in concealing his designation and name, and by not disclosing that he was the competent authority, succeeded in appointing the respondent. The Secretary issued the Notification which shielded himself in the anonymous cloak of the competent authority and one which also concealed his connection with the respondent.

15. Whenever the Constitution grants power to an individual it mentions the person's position/ designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws, including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions

Judgement

courts are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022.

30-

Appeal allowed.

MWA/P-3/SC

"F" -31-

MOST IMMEDIATE
COURT MATTER

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(JUDICIAL WING)

No. SO(Lit-I)E&AD/1-1/2020
Dated: Peshawar, the 14.02.2022

To

1. **The Senior Member Board of Revenue.**
2. **The Additional Chief Secretary, P&D Department.**
3. **All Secretaries to the Government of Khyber Pakhtunkhwa.**
4. **All the Commissioners, Khyber Pakhtunkhwa.**
5. **The Secretary, KP Public Service Commission, Peshawar.**
6. **All Heads of Attached Departments/ Autonomous Bodies in KP.**
7. **All the Deputy Commissioners, Khyber Pakhtunkhwa.**

Subject: - **JUDGMENT AS TO DISCLOSURE OF DESIGNATION & NAME OF THE "COMPETENT AUTHORITY" WHILE ISSUING NOTIFICATIONS, ORDERS, OFFICE MEMORANDUMS, INSTRUCTIONS, LETTERS AND OTHER COMMUNICATIONS ETC.**

I am directed to refer to the subject cited above and to state that the Hon'ble Supreme Court of Pakistan in its Judgment dated 30.12.2021 passed in the C.A No. 62-K of 2021 arising out of C.P No. 407-K of 2019 has passed certain orders/ given directions, the operative part whereof is reproduced as under:-

> "For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that **there is a need to put a stop to the use of the illusive and elusive term – the *competent authority* without disclosure of the competent authority's designation and name**. Therefore, the governments of Sindh (petitioner No. 01) Baluchistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Court's all District and Sessions Courts, are **required to issue requisite orders/ directions that they and their respective functionaries, semi-governments and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure**

that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this Judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the Provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to **publish the same in their respective gazettes** or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

You are therefore, requested to comply with the orders/ directions contained in the said Judgment in letter & spirit in future.

Chief Secretary, Govt. of
Khyber Pakhtunkhwa

Endst: of even No. & Date.

Copy forwarded for information to the:-

1. Registrar, Supreme Court of Pakistan at Islamabd.
2. Deputy Registrar, Supreme Court of Pakistan M.R. Kayani Road, Karachi with reference to his letter No. C.A62-K of 2021 arising out of No. C.P 407-K of 2019 dated 26.01.2022.
3. Manager, Printing Press Peshawar for issuing it in the official gazette of Khyber Pakhtunkhwa.
4. All Additional Secretaries/ Deputy Secretaries in Establishment & Administration Department.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers/ Estate Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
9. PA to Additional Secretary (Judicial), Establishment Department.
10. PA to Deputy Secretary (Judicial), Establishment Department.
11. Master File.

(Mukaram Khan)
Section Officer (Litigation-I)

"G" -33-

PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	28.09.2022.	W.P.No.3508-P/2022. Present:- Mr.Noor Muhammad Khattak, Advocate for the petitioners. ==== **S M ATTIQUE SHAH:-** Through instant writ petition, petitioners have approached to this court with the following prayer:- ***"1. An appropriate writ may kindly be issued to declare the impugned notification vide dated 22.08.2022 to the extent of the term "Competent Authority", as ineffective upon the rights of petitioners, without mandate of law, illegal, unlawful, unconstitutional, impracticable, invalid, void ab initio and ultra vires in light of the judgments cited as 2022 SCMR 439 narrated under the roof of grounds.*** ***2. Further, a writ of mandamus may also be kindly issued directing the respondents No.1, 2, 3, (Provincial Government) defined under Article 129 of the Constitution of Islamic Republic of Pakistan to act strictly in accordance with law while communicating the respondent No.05 to keep him bound for notifying/publishing the orders/ directions contained in the judgment cited as 2022 SCMR 439 under proper authority in the official Gazette under Section 20-A of General Clauses Act to take a legal effect. "*** 2. In essence, the petitioners are aggrieved from notification No.SOH-III/7-262/2022(Drug Inspector), issued by respondent No.4 being in violation of the judgment of the august Apex

ATTESTED
EXAMINER
Peshawar High Court

-34-

Court rendered in ***Province of Sindh and others Vs. Shahzad Hussain Talpur,*** reported as ***(2022 SCMR 439)***.

3. Heard. Record perused.

4. Perusal of the ibid notification would reflect that the said notification has been issued pursuant to the judgment of the Khyber Pakhtunkhwa Services Tribunal dated 06.12.2021 in Service Appeal No.16578/2020. For ready reference, the said notification is reproduced below:-

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.

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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		
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-sd-

ATTESTED
EXAMINER
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Secretary to Govt. of Khyber
Pakhtunkhwa Health Department.

Ibid notification clearly reflects that the same is based upon the judgment of the Service Tribunal dated 06.12.2021 passed in Service Appeal No.16578/2020 of the petitioners. In fact the petitioners through instant writ petition under the guise of the ibid judgment of the august Apex Court, seek setting aside of the said notification being violative of the ibid judgment of the august Apex Court.

The matter of the impugned notification revolves around the posting/ transfers of the petitioners which squarely falls within the terms and; condition of the service of the petitioners provided by Chapter II of the Civil Servants Act, 1973, which are indeed amenable to the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal provided by section 4 of the Service Tribunal Act, 1974. The jurisdiction of this court in such matter is explicitly barred under the provisions of Article 212 (2) of the Constitution. ***Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab & others (1997 SCMR 167), Ayyaz Anjum Vs. Govt: of Punjab, Housing & Physical Planning Department through Secretary and others (1997 SCMR 169), Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik & others (1997 SCMR 170), Secretary Education NWFP, Peshawar and 2 others Vs.***

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Mustamir Khan & others (2005 SCMR 17) and ***Peer Muhammad Vs. Govt: of Baluchistan through Chief Secretary & others (2007 SCMR 54).***

5. The ibid view of the august Apex Court has further been affirmed in recent judgment rendered by the august Apex Court in ***Chief Secretary, Govt: of Punjab Lahore and others Vs. M/s Shamim Usman's*** reported in ***(2021 SCMR 1390)***, the relevant portion of the ibid judgment is reproduced below:-

> ***"The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal."***

Coming to the contention of the learned counsel for the petitioners that the impugned notification is liable to be set aside being in violation of the judgment of the august Apex Court reported in the case of ***Province of Sindh Vs. Shehzad Hussain Talpur (2022 SCMR 439)***, the relevant portion of the ibid judgment is reproduced below:-

> ***"15. Whenever the Constitution grants power to an individual it mentions the person's position/ designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws,***

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including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the

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Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

Pursuant to the above judgment of the august Apex Court the worthy Chief Secretary, Government of Khyber Pakhtunkhwa has issued a notification No.SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 vide which compliance of the ibid judgment was sought in letter and spirit in future. However, due to the reasons best known to the respondents at the time of issuance of the impugned notification the ibid judgment of the august Apex Court was not complied with in letter and; spirit.

Under the provisions of Article 189 of the Constitution the decisions of the Supreme Court are binding on all other courts. For ready

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reference the same is reproduced below:-

> ***"Any decision of the Supreme Court shall, to the extent that it decides a question of law which is based upon or enunciates a principle of law, is binding on all other courts in Pakistan."***

Given that the decisions of the Supreme Court are binding upon all the stakeholders and; as earlier discussed the Government of Khyber Pakhtunkhwa has already issued a notification qua the compliance of the ibid judgment of the august Apex Court in letter and; spirit, however, mere non-compliance of the ibid judgment of the august Apex Court would not confer jurisdiction upon this court in a matter which is squarely arising out of the terms and; conditions of the service of a civil servant. Undeniably the decisions of the august Apex Court are binding on each and; every organ of the state by virtue of the provisions of Articles 189 and; 190 of the Constitution. It is well settled that a question of law, pronounced or declared by august Apex Court in terms of Article 189 of the Constitution has binding effect on all functionaries both executive and; the judicial authorities. The superior courts, tribunals have obligation to implement and; adhere to the judgment of the Supreme Court rendered. ***Moulvi Abdul Qadir & others Vs. Moulvi Abdul Wassay and others (2010 SCMR 1877).***

6. In view thereof the worthy Service

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Tribunal Khyber Pakhtunkhwa is very much clothed with the jurisdiction and; authority to implement the ibid decision of the august Apex Court in terms of Articles 189 and; 190 of the Constitution and; petitioners can validly agitate the same before the worthy Service Tribunal if they so wish and; desire.

7. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in *limine*. However, respondents are directed to implement and; enforce the ibid judgment of august Apex Court in its letter and; spirit. Copy of instant judgment be sent to the worthy Chief Secretary for compliance.

JUDGE

JUDGE

Announced.
Dt.28.09.2022.

No. 57026
Date of Presentation of Application 1-11-22
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Peshawar
Under Article 87
Qanun-e-Shahadat Order
01 NOV 2022

(A.K. KHAN Court Secretary)

HON'BLE MR.JUSTICE MOHAMMAD IBRAHIM KHAN &
HON'BLE MR.JUSTICE S. M. ATTIQUE SHAH.

VAKALATNAMA -41-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO: _____ OF 2022

Manzoor Ahmed

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt

(RESPONDENT)
(DEFENDANT)

I/We (Appellant)

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. 21 / 11 /2022

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

&

MUHAMMAD AYUB
ADVOCATES

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