

5<sup>th</sup> July, 2022

Petitioner in person present. None for the respondents present.

Mr. Adeel Butt, Addl: AG on behalf of the respondents put appearance in early hours of the court and assured that he would submit compliance report in the matter in some moments but later on neither compliance was submitted nor he put appearance. Therefore, salaries of the judgment debtors attached. The Accountant General Khyber Pakhtunkhwa is directed to attach the salaries of the respondents not to release the same till further order by this Tribunal. Show cause notice be also issued to the respondents as to why they should not be proceeded under the Contempt of Court Ordinance-2003.

Last chance is given to the respondents to implement the judgment and submit compliance report on 06.09.2022 before S.B.



(Kalim Arshad Khan)  
Chairman

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.



(Kalim Arshad Khan)  
Chairman

23.05.2022

Petitioner in person present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Safiullah Focal Person for the respondents present.

The respondent department has submitted a summary to the Chief Minister on 20.05.2022 for implementation of the judgement of Service Tribunal dated 06.12.2021. Learned Assistant Advocate General requested that since the execution is under process in the department, a short adjournment may be granted so that the implementation report could be submitted on the next date. Adjourned. To come up for implementation report on 05.07.2022 before S.B.






(MIAN MUHAMMAD)  
MEMBER (E)

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 172/2022

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge   |
|-------|---------------------------|--|
| 1     | 2                         | 3  |
| 1     | 05.04.2022                | <p>The execution petition of Mr. Muhammad Arif Hussain submitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"><br/>REGISTRAR.</p>   |
| 2-    |                           | <p>This execution petition be put up before Single Bench at Peshawar on <sup>10</sup><del>24</del>-05-2022. Notices to the appellant and his counsel be also issued for the date fixed. <i>Notices to the respondents be also issued for implementation Report.</i></p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |
|       | 10.05.2022                | <p>Petitioner present through counsel.</p> <p>Muhammad Adeel Butt, learned Additional Advocate General for respondents present.</p> <p>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.</p> <p style="text-align: right;"><br/>(Rozina Rehman)<br/>Member (J)</p> |

*Noted  
15.4  
2022*

Sir,

1. PUC is an application submitted by Additional Advocate General Khyber Pakhtunkhwa Peshawar in COC Petition No. 172/2022, titled "Muhammad Arif Hussain Vs. Chief Secretary Khyber Pakhtunkhwa and others" on behalf of respondents wherein he has stated that the judgment of this Tribunal has been implemented by the respondents vide order dated 22.08.2022 (copy attached). He requested that the order of attachment of salaries of respondents dated 05.07.2022 may kindly be recalled.
2. Submitted for perusal and appropriate orders please.

Registrar <sup>W</sup> 31/8/2022  
KP Service Tribunal,  
Peshawar.

3. ~~HON'BLE MEMBER~~

*Application to be placed on file and  
Salary released to the respondents*

Registrar

*[Signature]*  
31/08/22

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

**EXECUTION PETITION NO. 172 / 2022**

**IN**

**SERVICE APPEAL NO: 16580 2020**

**M. ARIF HUSSAIN**

**V/S**

**HEALTH DEPTT:**

**I N D E X**

| <b>S.N<br/>O</b> | <b>DOCUMENTS</b>         | <b>ANNEXURE</b> | <b>PAGE</b> |
|------------------|--------------------------|-----------------|-------------|
| <b>1</b>         | Memo of implementation   | .....           | 1 - 2       |
| <b>2</b>         | Affidavit                | .....           | 3           |
| <b>3</b>         | Judgement dt: 06.12.2021 | <b>A</b>        | 4-17        |
| <b>4</b>         | Application              | <b>B</b>        | 18          |
| <b>5</b>         | Wakalat Nama             | .....           | 19          |

Dated: \_\_\_\_ .04.2022

**APPELLANT**

Through:

**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**0345-9383141**

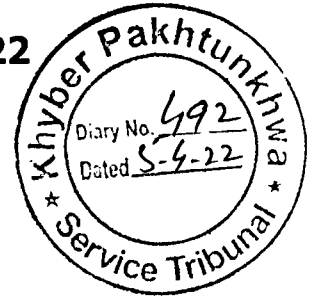
(1)

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

Implementation/COC Petition No. 172 /2022

In

Appeal No. 16580 /2020



Mr. Muhammad Arif Hussain, Drug Analyst (BPS-18),  
Senior Pharmacist Service Hospital Peshawar.

.....**PETITIONER**

**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**

**IMPLEMENTATION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE JUDGMENT**  
**DATED 06/12/2021 PASSED IN APPEAL**  
**NO. 16580 /2021 TITLED M. ARIF HUSSAIN VS**  
**HEALTH DEPARTMENT & OTHERS IN LETTER AND**  
**SPIRIT.**

**R/SHEWETH:**

- 1- That the petitioner filed service appeal bearing No. 16580 /2021 before this august Service Tribunal in which the petitioner/appellant impugned the transfer dated 06.10.2022.
- 2- That the appeal of the petitioner was finally heard on 6.12.2021 and as such the ibid appeal was allowed in favour of the petitioner by this august Service Tribunal with the direction to the respondents:

***" For what has gone above, all the appeals with their respective prayers are accepted 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. Copy of the judgment dated 16-12-2021 is attached as annexure ..... A.***

- 3- That after obtaining copy of the judgment dated 16-12-2021 the petitioner submitted the judgment mention

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above along with application for implantation to the Department concerned but the respondents are not willing to obey the judgment dated 06-12-2021 in letter and spirit. Copy of the application is attached as annexure ..... **B.**

- 4- That petitioner time and again visited the respondent Department for the implementation of the judgment of this august Tribunal but of no avail.
- 5- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant implementation petition the respondents may kindly be directed to implement the Judgment dated 06-12-2021 passed in appeal No. 16580/2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

**PETITIONER**

*Avil*

**M. ARIF HUSSAIN**

**THROUGH:**

*QZ*  
**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

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

**EXECUTION PETITION NO. \_\_\_\_\_/2022**

**M. ARIF HUSSAIN**

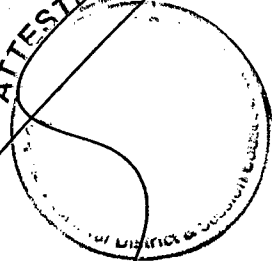
**VS**

**HEALTH DEPTT:**

**AFFIDAVIT**

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

ATTESTED



*Arif*  
**DEPONENT**

**CERTIFICATE:**

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

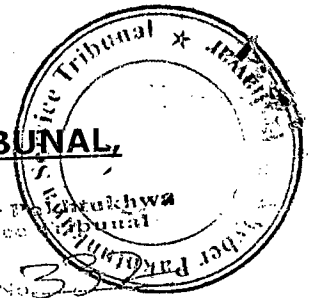
*[Signature]*  
**CERTIFICATION**



ANNEX A

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



APPEAL NO. 16580 /2021

DEPT. NO. 322  
DATE: 6/1/2021

Mr. Arif Hussain, Drug Analyst (BPS18),  
O/O the Drug Testing Laboratory, Peshawar under transfer to the post Sr.  
Pharmacist (BS-18), Police Service Hospital, 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.
- 4- The Medical Superintendent, Police Services Hospital, Peshawar.
- 5- Miss. Naila Basher, Senior Pharmacist (BS-18), under transfer to Drug Testing Laboratory, 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 ANALYST (BPS-18), DRUG TESTING LABORATORY, PESHAWAR TO THE POST OF SENIOR PHARMACIST (BS-18), POLICE SERVICES HOSPITAL, PESHAWAR 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**

**PRAYER:**

**Filed to-day** 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 private respondent No.5 and the respondents may kindly be directed not transfer the appellant from the post of Drug Analyst (BS-18), Drug testing laboratory, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Registrar  
6/01/2021

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

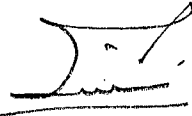
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16580/2020  
06.12.2021

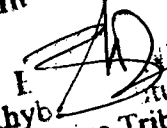
Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Ibrahim Khan, Deputy Secretary, Ziaullah Deputy Secretary and Safiullah, Focal Person for the respondents present.

Vide our detailed judgment of today in connected Service Appeal No. 16578/2021, titled "Manzoor Ahmad Vs. The Chief Secretary, Khyber Pakhtunkhwa Peshawar and others", this appeal is 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 Analyst. Parties are left to bear their own costs. File be consigned to record room after completion.

  
(Salah-ud-Din)  
Member(J)

  
Chairman

ANNOUNCED  
06.12.2021

**Certified true copy**  
  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**Date of Presentation of Application** 01-04-22  
**Number of Pages** 800  
**Copy** 10/2  
**Page** 10/2  
**Time** 10/2  
**Number of Copy** 04/04/22  
**Date of Delivery of Copy** 04/04/22

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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, ... For appellant,  
Advocate.

Mr. Muhammad Adeel Butt,  
Addl. Advocate General ... For respondents.

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

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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.

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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

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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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Service Tribunal  
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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.

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

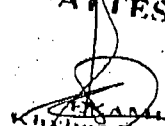
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9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. 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*

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**ATTESTED**  
  
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 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar



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

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Khyber Pakhtunkhwa  
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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 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

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Khan Iqbal  
Secretary  
Peshawar

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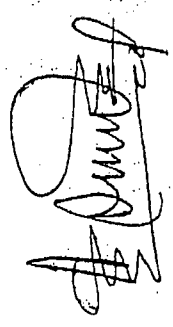
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highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

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



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**Peshawar**

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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 backing, 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

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

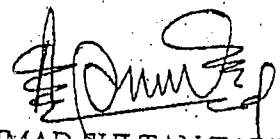
"8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, 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.



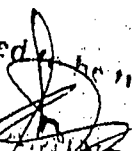
(SALAH-UD-DIN)  
Member(J)

ANNOUNCED  
06.12.2021



(AHMAD SULTAN TAREEN)  
Chairman

Date of Presentation of Application 02/02/2022  
Number of Words 5200  
Copying Fee 54/-  
Urgent 4/-  
Total 58/-  
Name of Copytext \_\_\_\_\_  
Date of Completion of Copy 02/02/22  
Date of Delivery of Copy 02/02/22

Certified to be true copy  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*Attested*

ANNEX B

Dairy No. 2899

Date 9.2.22

Health Department

Secretary to the Govt. of Khyber Pakhtunkhwa,  
Health Department,  
Peshawar.


Subject: - **REQUEST FOR IMPLEMENTATION OF JUDGMENT OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

Dear Sir,

Most reverently, I want to bring your kind attention to the judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar announced on 08-12-2021 wherein the impugned posting / transfer Notification bearing No. SOH-III/10-4/2020 dated 06-10-2020 has been set aside by the Honorable Tribunal (copy of the Judgment is enclosed for ready reference).

2- In view of the above, your good-self is requested to kindly implement the Judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar and withdraw the posting / transfer Notification No. SOH-III/10-4/2020 dated 06-10-2020 ab initio, to the extent of the undersigned, appearing at Sr. No-2 of the said Notification where in the undersigned was transferred from post of Drug Analyst B.P.S-18, Drug Testing Laboratory Peshawar to the post of Senior Pharmacist Services Hospital Peshawar, for which I shall highly be indebted to you.

Encls: As above

  
(ARIF HUSSAIN)  
DRUG ANALYST (BS-18)  
Senior Pharmacist, Service Hospital  
Peshawar.

Copy to: -

1. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, alongwith a copy of judgment.
3. Director General Drug Control and Pharmacy Services, Peshawar alongwith a copy of judgment.
4. Director Drug Testing Laboratory, Hayatabad, Peshawar, alongwith a copy of judgment.

Attested

**VAKALATNAMA**

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

APPEAL NO: \_\_\_\_\_ OF 2022

M. Arif Hussain (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Health (RESPONDENT)  
(DEFENDANT)

I/We M. Arif Hussain

Do hereby appoint and constitute **NOOR MUHAMMAD 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. \_\_\_\_/\_\_\_\_/2022

Arif  
**CLIENTS**

ACCEPTED

**NOOR MUHAMMAD KHATTAK**

**UMER FAROOQ MOHMAND**

**KAMRAN KHAN**

**MOHAMMAD MAAZ MADNI**

Haider Ali  
**HAIDER ALI**  
**ADVOCATES**



**"B"**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
**JUDICIAL COMPLEX (OLD), KHYBER ROAD,**  
**PESHAWAR.**

No.

Appeal No. F.P. 172 of 2022

Mohammad Aft Hussain Appellant/Petitioner

Versus

Ch. of Secy UPK Peshawar Respondent

Respondent No. (11)

Notice to: — The Ch. of Secy UPK Peshawar

**WHEREAS** an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on.....10/05/2022.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of ~~appeal~~ <sup>E.P.</sup> is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this.....28<sup>th</sup>

Day of.....April.....2022

(For Implementation Report)

[Signature]  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.

PS/Secy E&AD KP  
Diary No. 9/5/22  
ETS No. 9/5/22

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

No.

Appeal No. F.P. 172 <sup>55</sup> of 20 <sup>22</sup>

Muhammad Iqbal Hossain Appellant/Petitioner.  
Versus

Chief Secy KPK Peshawar Respondent.  
Respondent No. 00

Notice to: —

In Secy Health Department KPK Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for bearing before the Tribunal \*on.....at 8.00 A.M. If you wish to urge anything against the appellant/~~petitioner~~ you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....<sup>28th</sup>

Day of.....20

(For Impl-ment-ation Report)

Received  
22  
9.09/05/22  
10:10 AM

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

- Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. <sup>77</sup>1076-1/ST

Dated: 18/05 / 2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To

- 1 The Chief Secretary Khyber Pakhtunkhwa,  
Peshawar
- 2 The Secretary Health Department, Khyber Pakhtunkhwa,  
Peshawar

Subject: ORDER IN IMPLEMENTATION /COC PETITON NO. 172/2022 MR. MOHAMMAD ARIF HUSSAIN

I am directed to forward herewith a certified copy of order dated 13-05-2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above

  
(WASEEM AKHTAR)  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

No. 2326/ST Dated 3/8/2022


To:

The Accountant General,  
Khyber Pakhtunkhwa,  
Peshawar.

**SUBJECT:- ORDER REGARDING ATTACHMENT OF SALARIES IN EXECUTION PETITION NO. 172/2022, TITLED MUHAMMAD ARIF HUSSAIN -VS- THE CHIEF SECRETARY, GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR AND OTHERS.**

I am directed to forward herewith a certified copy of order dated 05.07.2022, passed by this Tribunal in the above mentioned execution petition for strict compliance.

Incl. As above.

  
(AMIR FAROOQ)  
ASSISTANT REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL,  
PESHAWAR.

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

**CM No.** \_\_\_\_\_

Diary No. 1118

IN

Dated 31-8-2022

**COC PETITION NO. 172/2022 IN SERVICE APPEAL NO. 16580/2021.**

Muhammad Arif Hussain.....Petitioner

**Versus**

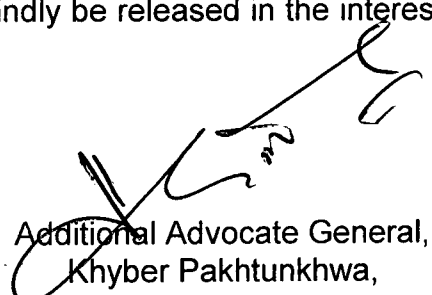
Government of Khyber Pakhtunkhwa & others .....Respondents.

**PETITION FOR EARLY HEARING/SALARIES RELEASE**

**Respectfully Sheweth**

1. That the above subject titled COC in Service Appeal mentioned above is pending for adjudication before this Honorable Service Tribunal for 06/09/2022.
2. That this Honorable Service Tribunal vide order dated 05-07-2022 has attached the salaries of the Applicants/Respondents till submission of implementation report (copy of order sheet dated 05-07-2022 is attached as **Annexure-I**).
3. That the Respondents have implemented the judgment dated 06-12-2021 vide notification dated 22-08-2022 in compliance with the order of this Honorable Service Tribunal (Copy of notification dated 22-08-2022 is attached as **Annex- II**).
4. That due to attachment of salaries the Applicants/Respondents are facing financial problems and hardship.

It is, therefore, humbly prayed that on acceptance of the instant petitions. Salaries of the respondents /petitioners may kindly be released in the interest of justice.

  
Additional Advocate General,  
Khyber Pakhtunkhwa,  
Peshawar

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR**

**Implementation /COC Petition NO. 172/2022**

**IN**

**Service Appeal No. 16580/2020.**

Mr. Muhammad Arif Hussain, Drug Analyst (BPS-18), Senior Pharmacist  
Services Hospital Peshawar.

.....**PETITIONER**

**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**

**IMPLIMENTATION REPORT**

**R/SHEWETH:**

1. Pertain to record, need no comments.
2. Pertain to record, Need no comments.
3. Incorrect, the replying respondents on receiving judgment of the  
Tribunal forwarded summary for implementation of the judgment to  
the competent Authority and on the approval of the competent  
authority judgment of the honorable tribunal was implemented vide  
notification dated: 22/08/2022 (Annex-A).
4. Incorrect detail reply has been furnished in preceding paras.
5. Incorrect detail reply has been furnished in preceding paras.

It is therefore humbly prayed that this Ex-Petition /COC may kindly  
be dispose off in light of this implementation report.

DG (DC & PS)  
Khyber Pakhtunkhwa Peshawar  
As Respondent No. 3

Secretary Health  
Khyber Pakhtunkhwa, Peshawar  
As Respondent No. 1 & 2



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar, the 22<sup>nd</sup> 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 Halimi Chief Drug Inspector BS-19. | Chief Pharmacist (BS-19), KDA, Kohat.   | Chief Drug Inspector (BS-19), District D.J 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

Enlist 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.

*A Hestee*  
*Prof's*  
Section Officer (Lit-II)  
Health Department  
Khyber Pakhtunkhwa

26/8/22

9. The Deputy Director (I.T) Health Department.
10. PS to Secretary Health, Khyber Pakhtunkhwa.
11. PA to Deputy Secretary (Admin) Health Department.
12. PA to Deputy Secretary (Drugs) Health Department.
13. Officers concerned.

  
22-08-22  
(Nadir Nazar)  
SECTION OFFICER-III