


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 724 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.12.2022	<p>The execution petition of Dr. Muhammad Irshad submitted today by Mr. Muhammad Ayub Shinwari Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Execution Petition No 734 /2022
In
Service Appeal No 410/2020

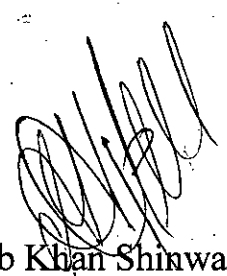
Dr M Irshad Versus Govt of KP through Secty Health & others

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S. No	Description of Document	Dated	Annex	Pg No
1.	Copy of application and affidavit			1-2
2.	Copy of Judgment	28-06-2022	A	3-6
3	<i>Witness</i>			7


Applicant

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar.

Chamber:
7-A, Haroon Mansion,
Khyber Bazar, Peshawar
Cell # 03219068514

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Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Execution Petition No 734 /2022

Khyber Pakhtunkhwa
Service Tribunal

In

Service Appeal No 410/2020

Diary No. 2369

Dated 16-12-2022

Dr Muhammad Irshad S/o Malik Abdur Rauf,
H No 434, Block-D, Street No 6, New City Home, Peshawar**Applicant**

Versus

1. Govt of Khyber Pakhtunkhwa through Secretary Health Deptt, Peshawar
2. Director General Health Services, Govt of KP, Peshawar
3. Director Health Services, Tribal Districts, Peshawar**Respondents**

**Application under Section 7(d) of KP Service Tribunal Act,
1974 for execution of Judgment dated 28-06-2022.**

Respectfully Sheweth,

The applicant submits as follows:

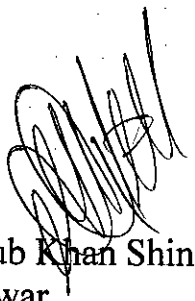
1. That the applicant filed the title Appeal before this Learned Tribunal, Which is allowed by this learned Tribunal vide Judgment Dated 28-06-22.
2. That the copy of the Judgment is not only delivered to the respondents by the Office of this learned Tribunal but also the applicant himself submitted the copy of the said Judgment by hand to the respondents with a request to implement the said Judgment and Order in its letter and spirits.
3. That the respondents are deliberately not obeying and implementing the judgment of this learned Tribunal amounting to the naked contempt of court.

It is, therefore, prayed that on acceptance of this application the respondents may kindly be directed to implement the judgment and order dated 28-06-2022 passed in the title Service Appeal by this learned Tribunal in its letter and spirits.


Applicant

Dr M Irshad

Through


Muhammad Ayub Khan Shinwari
Advocate Peshawar.

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Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Execution Petition No _____/2022

In

Service Appeal No 410/2020

Dr M Irshad Versus Govt of KP through Secty Health & others

Affidavit

I, Dr Muhammad Irshad S/o Malik Abdur Rauf, H No 434, Block-D, Street No 6, New City Home, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this learned Tribunal.



Deponent

In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No 410 /2010Khyber Pakhtunkhwa
Service TribunalDiary No. 2352Date: 31-12-19

Dr Muhammad Irshad S/o Malik Abdur Rauf,
House No 434, Block-D, Street No 6,
New City Home, G. T Road, Peshawar



....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health Deptt, Peshawar
2. Director General of Health Services, Government of Khyber Pakhtunkhwa, Peshawar
3. Director Health Services, Tribal Districts, Peshawar

....Respondents

Service Appeal under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal Act, 1974 against the order dated 27-06-2018.

Respectfully Sheweth,


Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as Medical Officer on regular basis in the respondent Department vide Notification dated 31-05-1989. (Copy of Notification is appended herewith as **Annex-A**)
2. That the Appellant was *removed* from service vide order dated 27-06-2018 on the charges of willful absence from duty. (Copy of order is appended herewith as **Annex-B**)
3. That against the aforesaid Office Order the Appellant filed a Departmental Appeal, which has not been decided yet. (Copy of Departmental Appeal is appended herewith as **Annex-C**)

Hence this Service Appeal on the following amongst other grounds:

Grounds:

- a. That the impugned order is against the law, illegal, unlawful; without lawful authority and void ab-initio, thus liable to be set aside.
- b. That the alleged absence is not willful absence, as the appellant was suffering from severe psychiatric diseases and was under treatment, the appellant had approached the respondents for constitution of medical board but in vain. (Copies of medical prescriptions and application for constitution of medical board is appended herewith as **Annex-D & E** respectively)

ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Re-submitted to-day
and filed.

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 410/2020

Date of Institution ... 31.12.2019

Date of Decision ... 28.06.2022



Dr. Muhammad Irshad S/O Malik Abdur Rauf, House No. 434, Block-D, Street No. 6, New City Home, G:T Road, Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar and two others. ... (Respondents)

MR. MUHAMMAD AYUB KHAN SHINWARI,
Advocate

For appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated that facts giving rise to filing of the instant service appeal are that the appellant was serving as Medical Officer in Health Department. Departmental action was taken against the appellant on the allegations of absence from duty and he was removed from service vide the impugned order dated 27.06.2018. The departmental appeal of the appellant was not responded within the statutory period of 90 days, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has argued that the appellant was suffering from severe psychiatric disease and was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

under treatment, therefore, he could not attend his duty; that the appellant had also filed an application to the competent Authority, that as he was unable to perform his duty due to psychiatric illness, therefore, medical board may be constituted and he may be granted pension on medical ground, however his application was kept pending without any progress; that whole of the proceedings were carried out at the back of the appellant without complying the relevant rules and the appellant was not afforded any opportunity of personal hearing or self defence; that the competent Authority was required to have issued notice to the appellant through registered A/D but the same was not done and the appellant remained unaware of the disciplinary action against him; that there are material dents in the inquiry proceedings, therefore, the impugned order is not sustainable in the eye of law; that the appellant was having a long service of 29 years at his credit and even if the absence of the appellant was established, he should have been awarded the penalty of compulsory retirement from service.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant remained absent from duty without any sanctioned leave or permission of the competent Authority, therefore, departmental action was taken against him on the ground of absence from duty; that a regular inquiry was conducted in the matter by complying all legal and codal formalities; that the charge of absence from duty stood proved against the appellant in a proper inquiry, therefore, he has rightly been awarded the impugned penalty.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that departmental action was taken against the appellant on the allegations of absence from duty. Nothing is available on the record, which could show that the appellant had even applied for any leave. Notice was issued to the appellant through publication in two newspapers but even then he did not attend his duty. The


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Secretary
Service Tribunal
& Appeals

appellant has remained absent from duty for considerable long period without any sanctioned leave or permission of the competent Authority, which amounts to misconduct. The charge of absence from duty stood proved against the appellant, however while going through the record, we have observed that it is an admitted fact that the appellant had submitted an application to the D.G Health Services Khyber Pakhtunkhwa Peshawar on 27.06.2014 for constitution of medical board and granting him pension on medical ground as he was suffering from psychiatric disease. Correspondence regarding the said application of the appellant was made between office of D.G Health Services Khyber Pakhtunkhwa Peshawar and office of Secretary Health but without any outcome. Moreover, the appellant was appointed as Medical Officer vide Notification dated 31.05.1989 and was thus having a service of about 29 years at his credit. Keeping in view the length of service rendered by the appellant, we are of the view that the penalty so awarded to him is quite harsh and safe administration of justice would justify the modification of his penalty of removal from service into compulsory retirement from service.

7. In view of the above discussion, the appeal in hand is partially allowed and the major penalty of removal from service so awarded to the appellant is converted into compulsory retirement with effect from 27.06.2018. The intervening period of his absence from duty may be treated as leave without pay for the purpose of bridging up the service gap of the appellant. Parties are left to bear their own costs. File be consigned to the record room.

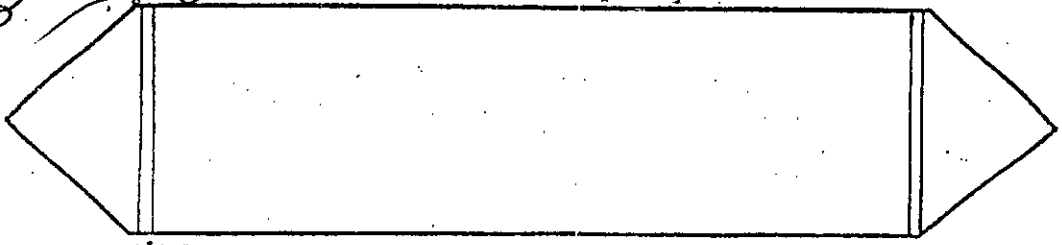
ANNOUNCED
28.06.2022


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ROZINA REHMAN)
MEMBER (JUDICIAL)

Certified to be true copy.
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

بعدالت جواب سرسروئل فرم بختوئی



2 منجانب

ڈاکٹر محمد ارشد بنام گورنٹ ویلہ

---	موزخہ
---	مقدمہ
---	دعویٰ
---	جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لئے محمد الیوسف خان مشہور اور ان کے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 15/11/2022

واہ العبد
 مقام
 محمد الیوسف خان
 فرم بختوئی

Appellant
 Frm