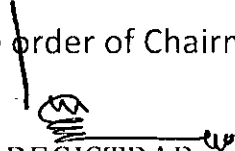


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 750/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.12.2022	<p>The execution petition of Mr. Azmatullah submitted today by Mr. Afrasiab Khan Wazir 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>

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

EXECUTION PETITION NO. 750 /2022

AZMATULLAH KHAN

VS

HEALTH DEPTT OF KP:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Execution petition	
2.	Affidavit	1-2
3.	Copy of Judgment dated 14.07.2022	A	3-6
4.	Copy of the application	B	7-8
5.	Vakalatnama	9

PETITIONER

THROUGH:

**AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT**

A7 ^{sub}

①

BEFORE THE KHYBER PAKHUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 750 /2022

Mr. Azmatullah Khan, Chief Clinical Technician Pharmacy (BPS-16) (Rtd),
R/O At Green City Shiekh Yousaf Road, District D.i.khan

.....PETITIONER.

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through secrtray Health department, Peshawar.
- 2- The Director General, Health Services, Khyber Pakhtunkhwa Peshawar.
- 3- District Account Officer, District Tank.
- 4- District Account Officer, Dera Ismail Khan.
- 5- Deputy District Health Officer, Sub Division Jandola, District Tank.
- 6- Deputy District Health Officer Sub-Division, Darzinda, District Dera Ismail khan.

.....RESPONDENTS.

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 14.07.2022 IN THE ABOVE TITLED APPEAL IN LETTER AND SPIRIT

R/SHEWETH:

1- That the above mentioned appeal has been decided by this August Service Tribunal vides judgment dated 14.07.2022 in favor of the Petitioner.

2- That the petitioner filed the appeal against the impugned order 08.03.2021 and thereby it is allowed in favor of the petitioner vide judgment dated 14.07.2022 with direction reproduced as under;

"in view of the above, the appeal is accepted and the respondents are directed to consider the promotion of the appellant as Chief Clinical Technician (BPS-16) with effect from 25.10.2017 with all back benefits and amend the retirement order in light of his promotion order and retire him from the post of Chief Clinical Technician (BPS-16) w.e.f the date of superannuation, with all pensionary benefits. The parties are left to bear their own costs. Consigned. Copy of Judgment dated 14.07.2022 is attached as annexure.....A.

3- That the petitioner repeatedly knocked the door of the respondents for implementation of the aforementioned judgment but they are not paying heed to it nor implementing the same. Copy of the application is attached as annexure.....**B.**

It is therefore, most humbly prayed that on acceptance of this execution petition the respondents may please be directed to execute the judgment dated 14.07.2022 in letter and spirit.

Dated: 08.12.2022

PETITIONER *Azmatullah*
AZMATULLAH KHAN

THROUGH:

Afrasiab
AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT

AFFIDAVIT:

I Mr. Azmatullah, Chief Clinical Technician Pharmacy (BPS-16) (Rtd), R/O At Green City Shiekh Yousaf Road, District D.i.khan do hereby solemnly affirm and declare that the content of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Tribunal for far.

Azmatullah
DEPONENT.

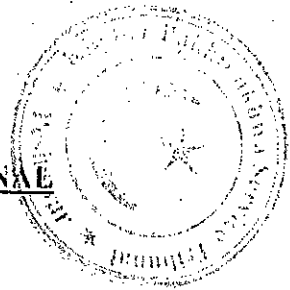
CERTIFICATE:

That no other execution petition has been filed between the parties before this August tribunal.

Azmatullah
DEPONENT.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 5202/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS. FAREEHA PAUL ... MEMBER(E)

Mr. Azmatullah Khan, Chief Clinical Technician Pharmacy (BPS-16) (Retd.),
R/O at Green City Sheikh Yousaf Road, District D.I.Khan.

....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
2. The Director General, Health Services, Khyber Pakhtunkhwa Peshawar.
3. District Health Officer, District Tank.
4. District Accounts Officer, District Tank.
5. District Accounts Officer, Dera Ismail Khan.
6. Deputy District Health Officer, Sub-Division Jandala, District Tank.
7. Deputy District Health Officer Sub-Division, Darazinda, District Dera Ismail Khan.

....(Respondents)

Mr. Afrasiab Khan Wazir
Advocate

For appellant

Mr. Muhammad Rasheed
Deputy District Attorney

For respondents

Date of Institution..... 19.05.2021
Date of Hearing..... 27.04.2022
Date of Decision..... 14.07.2022

JUDGMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the retirement order dated 08.03.2021, whereby the appellant was retired from service as Dispenser (BPS-12) instead of Chief Clinical Technician Pharmacy (BPS-16).

ATTESTED

Member (E)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant had been appointed as Dispenser in the respondent department on 25.05.1981. During service, he was promoted from the Senior Clinical Technician (BPS-14) to the post of Chief Clinical Technician Pharmacy (BPS-16) w.e.f 25.10.2017 and vide office order dated 26.12.2017 his services were placed at the disposal of Agency Surgeon, FR D.I.Khan. Respondent No. 7 was reluctant to adjust the appellant as Chief Clinical Technician Pharmacy (BPS-16) and wrote a letter to Director Health Services (FATA) that there was no vacant post of Chief Clinical Technician Pharmacy (BPS-16) to adjust the appellant and sought advice regarding his posting. The Director Health Services (FATA) Peshawar vide letter dated 03.04.2018 advised him to adjust the appellant in accordance with approved service structure of Paramedics but even then the appellant was not adjusted against the post of Chief Clinical Technician Pharmacy (BPS-16). Feeling aggrieved, the appellant filed Writ Petition No. 459-D/2018 before the Hon'ble Peshawar High Court, D.I.Khan Bench which was allowed vide judgment dated 08.10.2018 with the direction to respondent No. 7 to implement the order of the Director Health Services (FATA) Peshawar. In the meanwhile on competition of qualified service, vide order dated 08.03.2019, respondent No. 6 issued retirement order of the appellant as Dispenser (BPS-12) instead of Chief Clinical Technician (BPS-16). Feeling aggrieved from the order dated 08.03.2019, the appellant preferred Writ Petition No. 1105- D/2019 and vide order dated 12.01.2021, the Writ Petition was treated as representation/appeal and sent to respondent No. 2 for decision in accordance with law preferably within thirty days. The departmental appeal/representation was not responded by the respondents; hence the present appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were put on notice for submission of written reply/comments but despite numerous opportunities they could not submit reply/comments. On 11.01.2022, on the request of

ATTESTED
 [Signature]
 CLERK
 Secy to the Tribunal

[Signature]

learned Additional Advocate General last opportunity was granted to the respondents to furnish reply/comments on or before 27.04.2022, failing which their right to submit reply/comments was deemed to be struck off. Even then they did not submit their reply/comments. We have heard the learned counsel for the appellant as well as the Deputy District Attorney for the respondents and perused the case file with connected documents minutely and thoroughly.

4. Learned counsel for the appellant contended that the appellant had not been treated in accordance with law and rules. The appellant was already promoted to the post of Chief Clinical Technician Pharmacy (BPS-16) and then retiring him on the post of Dispenser (BPS-12) was blatant violation of law and rules and that the appellant was deliberately deprived from vested right of promotion on the post of Chief Clinical Technician.

5. Learned Deputy District Attorney, on the other hand, contended that there was no vacant post of Chief Clinical Technician Pharmacy (BPS-16) under the Agency Surgeon, FR D.I.Khan against which the appellant could be adjusted. He was adjusted against the vacant post of Dispenser (BPS-12) and he was rightly retired against the said post.

6. It is not disputed that the appellant was promoted from the post of Senior Clinical Technician (BPS-14) to Chief Clinical Technician (BPS-16). It was for the respondent department to adjust him against available vacant post in BPS- 16 but he could not be adjusted despite clear directions by the Director Health Services (FATA) vide his letter dated 03.04.2018 and Hon'able Peshawar High Court vide judgment dated 08.10.2018 in Writ Petition No. 459-D/2018. The contention of respondents that there was no post for adjustment of the appellant against a grade 16 post that is why he was adjusted against a lower grade post, is totally untenable as to how and why

promotion was made when there was no post of grade 16. In the meanwhile, the

ATTESTED

CLERK
Service Tribunal

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appellant attained the age of superannuation and vide order dated 08.03.2019, and he was retired from service from the post of Dispenser (BPS-12), instead of his actual grade to which he was admittedly promoted before his retirement, therefore, this act of the respondents was against the law and rules.

7 In view of above, the appeal is accepted and respondents are directed to consider the promotion of appellant as Chief Clinical Technician (BPS-16) with effect from 25.10.2017, with all back benefits and amend the retirement order in the light of his promotion order and retire him from the post of Chief Clinical Technician (BPS-16) w.e.f. the date of superannuation, with all pensionary benefits. Parties are left to bear their own costs. Consign.

8 Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of July, 2022.

(KALIM ARSHAD KHAN)
Chairman

(FARVEHA PAUL)
Member (E)

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09/12/22
Number 1600
18/12
19/12
22/12
Date of Copy 09/12/22
Date of Delivery of Copy 09/12/22

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VAKALATNAMA

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

_____ OF 2022

_____ Azmatullah khan _____
(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

_____ Health DEPTT: _____
(RESPONDENT)
(DEFENDANT)

I/We _____ Azmatullah khan _____
Do hereby appoint and constitute, **Afrasiab Khan Wazir, Advocate High Court, 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

Azmatullah
CLIENT(S)

Afrasiab Khan Wazir
ACCEPTED
AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT
PESHAWAR

Office:
Room No.6 Ground Floor, Afridi Tower,
Government College Chowk, Peshawar.
Cell No.031 9888752