


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 37/2023

S No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.01.2023	<p>The execution petition of Dr. Sardeef Kumar submitted today by Malik Akhtar Ali Khan Advocate. It is fixed for implementation report before touring Single Bench at Swat 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>

HYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Sardar KUMAR
..... Appellant

Versus

EOB & RPR
..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Malala Akhtar Ali Khan

Signature:- [Signature] Advocate
M.A.S.

Dated:- 16-1-2023

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

EP:

CM No. 37 /2022

In the matter of

Service Appeal No. 1054/2019

Decided on 28.04.2022

Dr Sardeef Kumar..... Applicant / Petitioner

VERSUS

The Govt of KPK & others Respondents


I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-3
2.	Affidavit		4
3.	Copy of the Judgment and Order dated 28.04.2022	A	5-12
4.	Wakalat Nama		


Petitioner / Applicant

Through

Dated: 10.01.2023


MALIK AKHTAR ALI KHAN
Advocate, Supreme Court
Of Pakistan
At Mardan

0302-8192993
0346-4984757

①

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

EP:
CM No. 37 /2022



In the matter of

Service Appeal No. 1054/2019

Decided on 28.04.2022

Dr Sardeef Kumar S/o Hukam Chand residents of Pir
Baba, District Bunir. SMO/TQ Pacha Killay District Buner

..... **Applicant / Petitioner**

VERSUS

1. The Govt of KPK through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar
2. The Secretary to Govt of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
3. Secretary to Govt of KPK Law & Parliamentary Affairs Department, Civil Secretariat, Peshawar.
4. Secretary to Govt of KPK, Establishment Department Civil Secretariat, Peshawar.
5. Secretary to Finance Department KPK, Civil Secretariat, Peshawar.

..... **Respondents**

APPLICATION FOR THE IMPLEMENTATION OF
THE JUDGMENT AND ORDER DATED

Q

28.04.2022 IN THE CAPTIONED SERVICE
APPEAL OF THIS HON'BLE TRIBUNAL.

Respectfully Sheweth:

1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 28.04.2022.
2. That vide judgment and order dated 28.04.2022 this Hon'ble Tribunal allowed the appeal and extended the benefit of **pensionary benefits** for the period of contract period w.e.f 1995 to 2001 (05 years). **(Copy of the Judgment and Order dated 28.04.2022 is attached as Annexure A)**
3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Petitioner vide various Applications for implementation. Thereafter the Petitioner is continuously approaching the Respondents for the implementation of the Judgment and Order dated 28.04.2022, however they are reluctant to implement the same.
4. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 28.04.2022 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents.

3

5. That the valuable rights of the Petitioner are involved in the instant case and the Respondents are violating the legal and fundamental rights of the Petitioner.
6. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

On acceptance of this Application, the Order and Judgment dated 28.04.2022 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit.

Sandoof Khan

Petitioner / Applicant

Through

Dated: 10.01.2023

Malik Akhtar Ali Khan

**MALIK AKHTAR ALI KHAN
Advocate, Supreme Court
Of Pakistan
At Mardan**

4

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

CM No. ____/2022

In the matter of

Service Appeal No. 1054/2019

Decided on 28.04.2022

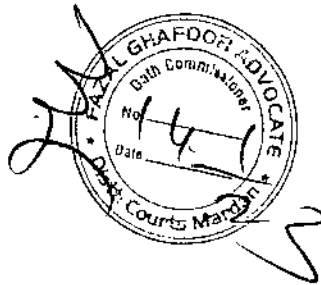
Dr Sardeef Kumar..... Applicant / Petitioner

VERSUS

The Govt of KPK & others Respondents

AFFIDAVIT

I, Dr Sardeef Kumar S/o Hukam Chand residents of Pir Baba, District Bunir. SMO/TQ Pacha Killay District Bunir, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Sardeef Kumar
DEPONENT



BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No. 1054 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1006

Dated 17/7/19

**DR. Sardeef Kumar S/O Hukam Chand resident of Pir Baba,
district Bunir.. .. Appellant.
Dr. Sardeef Kumar SMO/TO Pacha Killay Distt: Buner
Versus**

1. Govt. of KPK through Chief Secretary.
2. Secretary to Govt. of KPK, Health Department Khyber Pakhtunkhwa, Peshawar.
3. Secretary of Govt. of KPK, Law & Parliamentary Affairs Department Civil Secretariat Peshawar.
4. Secretary of Govt. of KPK, Establishment Department Civil Secretariat Peshawar.
5. Secretary to Finance Department KPK, Civil Secretariat Peshawar.

APPEAL U/S SECTION-4 OF THE SERVICE TRIBUNAL
ACT 1974 AGAINST THE DECISION OF RESPONDENTS
NO.1-4 WHEREBY THEY HAD NOT CONSIDERED THE
CONTRACT PERIOD OF PETITIONER SERVICES W.E.F
1995 TO 2001 WHEREBY THEIR CONTRACT PERIOD
ABOUT 5/6 YEARS WERE NOT CONSIDER FOR
SENIORITY MOVE OVER IN VIOLATION OF THE
JUDGMENT OF HONORABLE SUPREME COURT AS
LAID DOWN IN 2008 SCMR PAGE-380.

Filed to-day
Registrar
17/7/19

FACTS:

1. That the appellants No.1 were appointed on contract basis in the Health Department under supervision of Respondent No.1 Medical Officer BPS-17 in the year 18-12-1995
2. That the appointment on contract basis as stop gap arrangement.
3. That in Govt. of KPK Civil Secretariat Amendment Act 2013. The appellants were regularization W.E.F 01.07.2001.
4. That the intervening period w.e.f 18-12-1995 upto 01.07.2001 were not considered for seniority, more over. To the next grade etc.

Re-submitted to-day
and filed.
Registrar
16/8/19

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No. 1054/2019

6



ORDER
28.04.2022

Learned counsel for the appellant present. Mr. Safiullah, Focal Person alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 541/2019 titled "Dr. Mustafa Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022

(Mian Muhammad)
Member (Executive)

(Salah-ud-Din)
Member (Judicial)

Certified to be true copy

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 15/02/23
Number of Words 8000
Copying Fee 10/-
Urgent
Total 10/-
Name of Copy
Date of Receipt of Copy 03/04/23
Date of Delivery of Copy 03/04/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

7

Service Appeal No. 541/2019

Date of Institution ... 03.04.2019

Date of Decision ... 28.04.2022



Dr. Mustafa, Medical Officer, Category-C Hospital Khawaza Khila, Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and four others.

... (Respondents)

MALIK AKHTAR ALI KHAN,
Advocate.

--- For appellants.

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

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- This single judgment is aimed at the disposal of the instant as well as connected Service Appeals bearing No. 542/2019 titled "Mohammad Ali Jan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 543/2019 titled "Dr. Fazal Subhan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 544/2019 titled "Dr. Jamil Ahmad Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 545/2019 titled "Dr. Bakht Zada Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others"; 546/2019 titled "Dr. Faridoon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", 1054/2019 titled "Sardeef Kumar Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others" and 1055/2019 titled

ATTESTED
Khyber Pakhtunkhwa Services Tribunal
Peshawar

"Dr. Abdul Ghafoor Versus Government of Khyber Pakhtunkhwa through Chief Secretary and four others", as common questions of law and facts are involved in all the above mentioned appeals. 8

2. Briefly stated the facts as alleged by the appellants in their appeals are that the appellants namely Dr. Mustafa, Dr. Muhammad Ali Jan, Dr. Fazal Subhan, Dr. Jamil Ahmed, Dr. Bakht Zada and Dr. Sardeef Kumar were appointed as Medical Officers on contract basis in the year 1995, while the appellants namely Dr. Faridoon and Dr. Abdul Ghafoor were also appointed as Medical Officers on contract basis in the year 1999. On promulgation of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, their services were regularized with effect from 01.07.2001, however the intervening period of their contract services till 01.07.2001 was not considered for the purpose of seniority, therefore, the appellants filed Writ Petition No. 3518-P/2017 before the august Peshawar High Court, Peshawar, which was dismissed vide judgment dated 30.10.2018, being not maintainable, however it was observed that petitioners may approach the Services Tribunal for redressal of their grievance, hence the instant service appeals.

3. Notices were issued to the respondents, but they failed to submit reply/comments, despite several opportunities being given to them, therefore, the appeals were fixed ultimately for arguments.

4. Learned counsel for the appellants has contended that the contract period with effect from the date of initial appointment of the appellants till 01.07.2001 is legally required to be counted towards seniority and promotion of the appellants as seniority is reckoned from the date of initial appointment; that the appellants were performing similar duties being performed by the regular appointed Medical Officers, therefore, the period of their contract service shall be counted towards seniority; that according to Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, the period of contract service shall be counted towards pensionary benefits of the appellants; that in light of numerous judgments

ATTESTED

EX-AMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of worthy apex court, contract period shall be considered for the purpose of seniority but the respondents have wrongly and illegally ignored the judgments of worthy apex court; that the contract services of the appellants were without any break, which fact has not been considered by the respondents and resultantly, juniors to the appellants have become their seniors. Reliance was placed on 2018 SCMR 380, 1998 SCMR 969, 1991 SCMR 1765, 1993 SCMR 609, PLD 1970 Quetta 115 and unreported judgment dated 23.09.2020 passed by august Supreme Court of Pakistan in Civil Appeal No. 411 of 2020 titled "Additional Chief Secretary FATA, Peshawar and others Versus Sultan Muhammad and others".

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the services of the appellants were regularized with effect from 01.07.2001 vide Notification dated 17.10.2017, which has not been challenged by the appellants through filing of departmental appeals within the statutory period of 30 days, therefore, the appeals are not at all maintainable; that the departmental appeals were allegedly filed by the appellants in the year 2018 and 2019, which are badly time barred, rendering their service appeals liable to be dismissed on this score alone; that the contract period of services of the appellants could not be counted for the purpose of their seniority as their seniority shall be counted with effect from the date of regularization of their services; that the seniority of the appellants has rightly been reckoned from the date of regularization of their services, therefore, the appeals in hand may be dismissed with costs. Reliance was placed on 2022 SCMR 448 and 2019 PLC (C.S) 740.

6. We have heard the arguments of learned counsel for the appellants as well as learned Assistant Advocate General for the respondents and have perused the record.

7. A perusal of the record would show that some of the appellants were appointed as Medical Officers (BPS-17) on contract basis in the year 1995, while some were appointed as such in the year 1999. In view of sub-section 2 of Section-2 of

9

REGISTERED
 MEMBER
 SERVICE TRIBUNAL
 PESHAWAR

10

the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005 and the proviso under sub-section-4 of Section-19 of Civil Servants (Amendment) Act, 2013 as well as judgment dated 18.11.2018 passed by august Peshawar High Court, Peshawar in Writ Petition No. 1510 of 2007, Government of Khyber Pakhtunkhwa Health Department issued Notification dated 17.10.2017, whereby services of the appellants were regularized with effect from 01.07.2001. The core issue requiring determination is that as to whether the period of contract service of the appellants could be counted towards their seniority or not? In order to properly appreciate the controversy in question, it would be advantageous to go through para-1 (a) and (b) of Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which is reproduced as below:-

"Seniority ---(1) *The seniority inter se of civil servants [appointed to a service, cadre or post] shall be determined...*

- (a) *In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and*
- (b) *In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servant selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se seniority as in the lower post".*

Explanation-I, ---.....

Explanation-II, ---.....

Explanation-III, ---.....

(2).....

[(3).....]

ATTESTED

Khyber Pakhtunkhwa
 Civil Servants Commission
 Peshawar

8. While going through clause-b of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules,

1989, it is clear that the period of contract services of the appellants could not be counted for the purpose of seniority. Moreover, Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 also provides that seniority in a post service or cadre to which a civil servant is promoted, shall take effect from the date of regular appointment to that post. It is by now well settled that services rendered by an employee on ad-hoc or contract basis cannot be counted for the purpose of their seniority as the same will be counted from their regular appointment. Wisdom in this respect derived from the judgment of august Supreme Court of Pakistan reported as 2022 SCMR 448. The appellants have themselves mentioned in para-2 of their respective appeals that their appointment on contract basis was a stop gap arrangement. Furthermore, according to para (1) of offer of appointment, the appellants were appointed for a period of one year or till the availability of selectees of Public Service Commission or return of original incumbents from leave/deputation, whichever is earlier. The appellants were not even falling within the category of civil servants prior to their regularization on 01.07.2001. The appellants thus cannot claim their seniority vis-à-vis the Medical Officers, who were appointed on regular basis during the period during which the appellants were serving on contract basis. The judgments relied upon by learned counsel for the appellants are distinguishable and could not in any way foster the claim of the appellants regarding counting of their contractual period of employment for the purpose of their seniority.

9. One of the plea taken by learned counsel for the appellants is that as the period of contract service could be counted towards pensionary benefits in view of rules 2.2 and 2.3 of Pension Rules, therefore, the same has to be considered for the purpose of seniority also. Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963, are reproduced as below:-

" **2.2 Beginning of Service-** Subject to any special rules, the service of Government servant begins to qualify for pension when he

RECEIVED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12

takes over charge of the post to which he is first appointed.

Rule 2.3 Temporary and officiating service —
Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity".

10. While going through the above mentioned reproduced Pension Rules, it is evident that the period of contract employment could be considered only for the purpose of counting qualifying service for pensionary benefits and not for the purpose of seniority or any other benefits.

11. Consequently, the appeal in hand as well as connected Service Appeals bearing No. 542/2019, 543/2019, 544/2019, 545/2019, 546/2019, 1054/2019 and 1055/2019, being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.04.2022

(Handwritten signature)

(Handwritten signature)
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

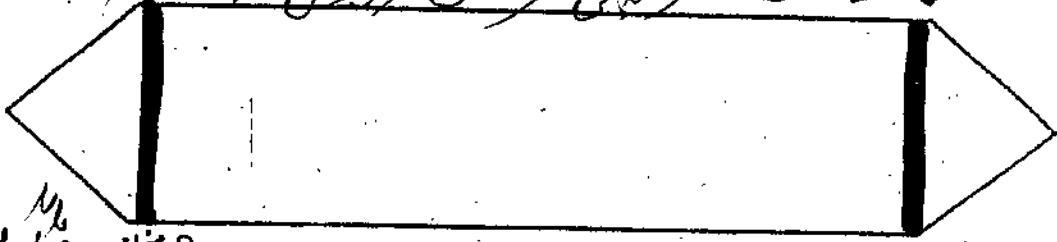
(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of Presentation of Application 15/02/23
 Number of Words 24000
 Copying Fee 24/-
 Urgent
 Total 24/-
 Name of
 Date of Submission of Copy 03/02/23
 Date of Delivery of Copy 03/02/23

بعدالت صورتی سر واصل نہ ہونے پر درخواست



22 جناب ڈاکٹر صاحب

ڈاکٹر محمد سعید، بنام حکومت

موزنہ 2022-1-15

مقدمہ

دعویٰ

ج.م

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام لعینہ کیلئے سید محمد سعید کے نام سے درخواست کی گئی ہے۔
 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 ثالثہ فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
 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 چاند التوائے مقدمہ کے سبب سے 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۔

Handwritten signature/initials on the right margin.

الرقوم _____ ماہ _____ 20

العینہ _____ واہ العینہ

مقام لعینہ کے لئے منظور ہے۔

Handwritten signature/initials at the bottom.