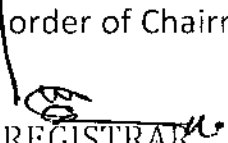


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 96/2023

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.02.2023	<p>The execution petition of Mr. Awal Badshah Khattak submitted today by Syed Noman Ali Bukhari 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  REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 96 /2023

In

Service Appeal No. 8817/2020

Awal Badshah Khattak


V/S

Health Department etc.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment dt: 19.10.2022	---A---	03-08
3.	Copy of application dt: 06.01.2023	---B---	09
4.	Vakalat Nama	-----	10

APPLICANT/PETITIONER


Awal Badshah Khattak

THROUGH:


(SYED NOMAN ALI BUKHARI)

Advocate, High Court
Peshawar.

Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 03339103

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 96 /2023

In

Service Appeal No. 8817/2020

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 3789

Date: 23/2/2023

Awal Badshah Khattak, Clinical Technologist BPS-17,
Health Department, Khyber Pakhtunkhwa, Peshawar.

PETITIONER

VERSUS

1. The Chief Secretary to Govt: of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Health Department Govt: of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Dean Khyber Medical College, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 19.10.2022 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.1685/2020 in this august Tribunal against the order dated 19.10.2022 whereby the appellant was removed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on 19.10.2022 and the Honorable Tribunal was kind enough to accept the appeal and the major penalty of removal from service so awarded the appellant is converted into major penalty of compulsory retirement from service with effect from 17.01.2020. (Copy of judgment is attached as Annexure-A).


- 9
3. That the appellant has also filed an application on 06.01.2023 for implementation of judgment but the respondent has not taken any action on the judgment dated 19.10.2022 till date. **Copy of application is attached as Annexure-B**
 4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
 6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 19.10.2022 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

APPLICANT/PETITIONER


Awal Badshah Khattak

THROUGH:


(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

AFFIDAVIT:

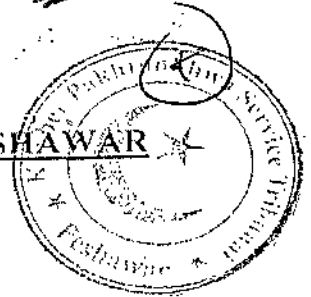
It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.




DEPONENT

A 3

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR



APPEAL NO. 8817/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5013

Mr. Awal Badshah Khattak, Clinical Technologist (BPS-17), Health Department, Khyber Pakhtunkhwa, Peshawar. Dated 10/06/2020

(Appellant)

VERSUS

1. The Chief Secretary to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Health Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Dean Khyber Medical College, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.01.2020 WHEREIN THE APPELLANT WAS REMOVED FROM SERVICE & AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

Filed to Registrar
10/06/2020

Not submitted to Registrar
and filed.

Registrar

2-9/7/2020

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 17.01.2020 MAY BE SET-ASIDE BEING ILLEGAL AND PASSED BY INCOMPETENT AUTHORITY AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 8817/2020

Date of Institution ... 10.06.2020

Date of Decision ... 19.10.2022



Awal Badshah Khattak, Clinical Technologist (BPS-17), Health Department,
Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Chief Secretary to Government of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and 02 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant joined Health Department as Technician (BPS-09) and was then promoted as Medical Technologist on 31.12.2004. The appellant while serving as Clinical Technologist in Khyber Medical College Peshawar, was proceeded against on the allegations of willful absence as well as preparing forged findings drawn and signed in the name of Provincial Ombudsman through deceitful means. On conclusion of

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ATTACHED
[Handwritten signature]
MEMBER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

(5)

the inquiry, the appellant was awarded major penalty of removal from service vide order dated 17.01.2020, which was challenged by the appellant through filing of review/departmental appeal, however the same was not responded, 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 contended that the appellant had not remained absent from duty and performed his duty regularly; that the appellant was seriously injured in a road accident and after availing medical leave, he submitted his arrival for duty on 02.07.2015; that the appellant was crippled in the accident and remained on wheel chair for a long period; that the alleged absence of the appellant w.e.f 26.11.2013 to 01.07.2015 had once been inquired into by appointing Deputy Secretary (Drugs) and the appellant had produced all medical record of his injuries to the inquiry officer but no outcome of the said inquiry was communicated to the appellant and he was again proceeded against on the same charges through a subsequent inquiry, which is illegal; that the allegations of absence from duty are false and unbelievable for the reason that the appellant was regularly receiving his pay during the period of alleged absence; that no evidence regarding the alleged absence of the appellant was recorded during the inquiry proceedings, therefore, the findings of the inquiry committee regarding willful absence of the appellant are not sustainable; that

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ATTESTED

[Signature]
 25/01/2020
 2020/01/25

the appellant had though submitted a complaint to the Provincial Ombudsman, seeking release of his salary, however he had not submitted any forged findings report of the Provincial Ombudsman in the department; that no cogent evidence was recorded during the inquiry, which could show that the forged findings report was submitted by the appellant in the department; that the complaint of the appellant had been accepted by the Provincial Ombudsman, therefore, there was no need of submitting forged findings report for release of salary of the appellant; that disciplinary action was taken against the appellant due to mala-fide intention for the purpose of causing damage to his long meritorious service of about 35 years; that the inquiry proceedings were conducted in a slipshod manner and the appellant was not provided any opportunity of cross-examination of the witnesses examined in the inquiry proceedings; that keeping in view the long and unblemished service record of the appellant, the punishment so awarded to him is quite harsh. Reliance was placed on 2018 SCMR 2077, 2007 PLC (C.S) 678, 2007 PLC (C.S) 685 and 2008 PLC (C.S) 77.

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4. On the other hand, learned Deputy District Attorney for the respondents has contended that a regular inquiry was conducted in the matter and as per findings of the inquiry committee, the allegations against the appellant stood proved; that the appellant was fully associated with the inquiry proceedings and was provided opportunity of self defence, however he failed to produce any evidence in rebuttal of allegations leveled against him; that final show-cause notice alongwith findings of the inquiry committee were

ATTESTED
[Signature]
 District Public Prosecutor
 Sessions Court, District Court

duly communicated to the appellant and he was also provided opportunity of personal hearing; that the inquiry proceedings were conducted in accordance with relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and there exists no legal dent in the same.

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 proper charge sheet as well as statement of allegations were issued to the appellant and an inquiry committee consisting of Mr. Ahmad Kamal, Secretary Provincial Transport Authority Khyber Pakhtunkhwa Peshawar and Muhammad Khalil Akhtar, Deputy Chief, HSRU Health Department was constituted for inquiry against the appellant. According to findings of the inquiry committee, the allegations against the appellant stood proved, therefore, competent Authority issued final show-cause notice alongwith copy of inquiry report to the appellant and after affording him opportunity of personal hearing, he was removed from service. The inquiry proceedings were conducted against the appellant in accordance with relevant rules of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and there exists no legal dent in the same. The allegations against the appellant have been proved in a regular inquiry.

7. While going through the record, we have observed that the appellant was appointed as Technician on 08.02.1984 and was having a service of almost of 36 years at his credit at the time of his

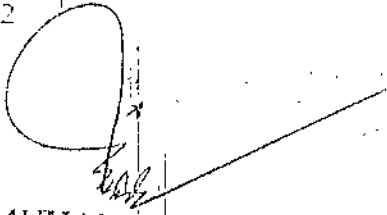
ATTACHED

EX-AMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


removal from service. Keeping in view the length of service rendered by the appellant, we are of the view that the penalty so awarded to him is harsh and safe administration of justice would justify the modification of his penalty of removal from service into compulsory retirement from service.

8. 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 major penalty of compulsory retirement from service with effect from 17.01.2020. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.10.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application: 21-12-22

Number of Words: 2600

Copying Fee: 26/-

Urgent: 4/-

Total: 30/-

Name of Applicant: _____

Date of Completion of Copy: 21-12-22

Date of Delivery of Copy: 21-12-22

To.

The Secretary to Government,
Health Deptt, KP

RA
5/11/2023

B-9
No. 4989.
6.01.23
Retirement

Subject: **Appeal/ Application for pension benefit (Compulsory retirement)**

Respected Sir,

With humble approach I have the honor to submit my appeal as cited in the subject above on following ground of facts.

1. That as per the acceptance of my appeal No.8817 /2020 dated 10/06/2020 I have been compulsory retired by the service tribunal KP. (Copy attached as annexure A)
2. That my pay has not been fixed with effect from 2018 to that date of compulsory retirement 17/01/2020).

Keeping in view the above mentioned facts and figures. It is requested that kindly consider my appeal sympathetically.

AW
Your Obedient
Awal Bad Shah
ex. medical Technologist
BP-17 KMC Health Department KPK
Cell No 0332-1920408

Date: 5/11/2023

بعدالت

کے پی سی سرورس ٹرسٹیوں کے بارے میں

اولیٰ نادر شاہ محلک
سہ 2ء منجانب
بنام

مورخہ

مقدمہ

دعویٰ

جرم

گورنمنٹ آف اے سی

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام سیشن اور کیے نسید نمان علی جی

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے کی تقریر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیار حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب 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۔

20ء

ماہ

المرقوم

Attested
by
Director
Sindh

العبد _____ واہ العبد _____