


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 334/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 25.05.2023 | <p>The execution petition of Mr. Arshad Khan submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 334/2023
In
Appeal No. 364/2019

ARSHAD KHAN VS GOVT OF KPK & OTHERS

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PETITIONER

THROUGH:


**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPEREME COURT**

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 334 /2023
In
Appeal No. 364/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5579

Dated 25/5/2023

Mr. Arshad Khan Rtd: Clinical Technician (Cardiology) (BPS-12), in the office of the Director General Health Services, Peshawar.

.....PETITIONER

VERSUS

- 1- Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- Director General Health Service, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Hospital Director, Hayatabad Medical Complex, Phase -V, Hayatabad, Peshawar.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 23.06.2022 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1. That the petitioner filed service appeal bearing No. 364/2019 before this august Service Tribunal against the inaction of the respondents to allow/grant invalid pension to the appellant in (BPS-09) with effect from the date of his retirement i.e., 28.06.2018, with all back benefits.
- 2. That the appeal of the petitioner was finally heard and decided 23.06.2022 and as such the ibid appeal was allowed in favour of the petitioner with the following relief by this august Service Tribunal:

"The appeal in hand is hence accepted and respondents are directed to allow/grant pension to the appellant in (BPS-12) from the date of retirement that is 28.06.2018".

Copy of the judgment dated 23.06.2022 is attached as annexure..... **A.**

3. That after obtaining copy of the judgment dated 23.06.2022 of this Hon'ble Tribunal, for implementation of his grievance but the respondents/department failed to do so, which is the violation of the judgment supra.
4. That petitioner having no other remedy but to file this implementation/execution petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 23.06.2022 passed in appeal No. 364/2019 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.



**PETITIONER
ARSHAD KHAN**

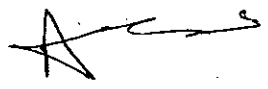
THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

AFFIDAVIT

I Mr. Arshad Khan Rtd: Clinical Technician (Cardiology) (BPS-12), in the office of the Director General Health Services, Peshawar, do hereby solemnly affirm that the contents of this **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT



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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



Service Appeal No. 364/2019

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER (J)**
MISS. FAREEHA PAUL ... **MEMBER(E)**

Mr. Arshad Khan, Rtd: Clinical Technician (Cardiology) (BPS-12), in the office of the Director General Health Services, Peshawar.

.... (Appellant)

Versus

1. Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. The Hospital Director, Hayatabad Medical Complex, Phase-V, Hayatabad, Peshawar.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

For appellant

Mr. Muhammad Adeel Butt
Addl. Advocate General

For respondents

Date of Institution.....07.03.2019
 Date of Hearing.....23.06.2022
 Date of Decision.....23.06.2022

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 inaction of the respondents to allow/grant invalid pension to the appellant in (BPS-12) instead of (BPS-09) with effect from the date of his retirement i.e 28.06.2018, with all back benefits.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed E.T.T Technician (BPS-09) on the recommendation of Departmental Selection Committee vide order dated 26.02.1999. The post was

upgraded to (BPS-12) vide notification dated 11.08.2015. On account of his mental depression the appellant was referred to standing medical board for medical examination on 16.7.2018. The medical board in its report dated 28.06.2018 declared him permanently incapacitated for government job on psychiatric grounds. On the recommendation of the board the appellant was retired from service w.e.f 28.6.2018 as clinical technician (BPS-12) vide order dated 24.08.2018. After retirement the appellant visited the concerned quarter for grant/issuance of pension in response to which the concerned authority told him that the pension would be allowed to him in (BPS-9) instead of (BPS-12). Feeling aggrieved he submitted departmental appeal on 21.11.2018. His appeal was processed and the Accountant General approved the entries of pay fixation and submitted that appellant be allowed to pension in (BPS-12) through its letter dated 08.01.2019. Instead of that the respondents did not allow his due right and hence the service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. Learned counsel for appellant presented copies of relevant portions of the service book which contained all the entries including up gradation from (BPS-9) to (BPS-12).

5. The learned Additional Advocate General contended that the appellant was not upgraded to (BPS-12) because he was on leave during that period when the order of up gradation was issued.

6. Record before us reveals that the appellant retired on medical grounds and the retirement order dated 24.8.2018 clearly mentioned that he retired in (BPS-12).

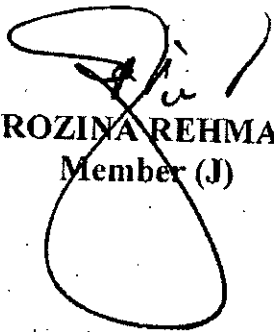
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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Copy of relevant portion of the service book presented before us also indicates that necessary entries had been made which shows that the appellant had been upgraded to (BPS-12) in the light of Finance Department notification dated 08.11.2015. There is no doubt that appellant was in (BPS-12) at the time of his retirement. The appeal in hand is hence accepted and respondents are directed to allow/grant pension to the appellant in (BPS-12) from the date of retirement, that is 28.06.2018. Parties are left to bear their on costs. Consign.

7. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of June, 2022.


 (ROZINA REHMAN)
 Member (J)


 (FARJEHA PAUL)
 Member (E)

Original in future copy

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 24/5/23
 Number of Words Page 3
 Copying Fee 5/-
 Urgent 24/5/23
 Name 24/5/23
 Date of Delivery of Copy 24/5/23

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution _____ No _____/2023

Arshad Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. _____/_____/202

Arshad Khan

CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

Waleed Adnan

WALEED ADNAN

Kamran Khan

KAMRAN KHAN

Umar Farooq Mohmand

UMAR FAROOQ MOHMAND

[Redacted Signature]

&

Muhammad Ayub
**MUHAMMAD AYUB
ADVOCATES**

&

Mahmood Jauhari
**MAHMOOD JAUHARI
ADV**

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