Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 388/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.06.2023	The execution petition of Mr. Muhammad Saeed 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. By the order of Chairman REGISTRAR

The execution petition of Mr. Muhammad Saeed received today i.e. 09.6.2023 is incomplete on the following scores which is returned to the counsel for the applicant for completion and resubmission within 15 days.

1- Annexures of the petition is unattested.
2- Annexure-A of the petition is illegible.

No. 1718 /S.T,

Dt. 12-06 /2023.

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Syed Noman Ali Bukhari Adv.
High Court Peshawar.

Sir.

objections removed & resubmitted

19-6-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 388 /2023
In
Service Appeal No.797/2018

Muhammad Saeed V/S Health Deptt:

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PETITIONER
Muhammad Saeed

THROUGH:

SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT
&
(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No._____/2023
In
Service Appeal No.797/2018

Mr. Muhammad Saeed, (Retired),
Senior PHC Technician(BPS-14),
R/o Shah Nawaz Town, Near Mufti Madrassa
Pajagi Road, basher Abad.

PETITIONER

VERSUS

1. The Govt of KP through the Chief Secretary KP, Peshawar.
2. The Secretary Health Deptt: KP, Peshawar.
3. The Secretary Finance: KP, Peshawar.
4. The Director General Health Services KP, Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED: 20/12/2022 OF THIS HONORABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No-797/2018 for Proforma promotion.

2. That the said appeal was finally heard by the Honorable Tribunal on 20-12-2022. The Honorable Tribunal is kind enough to allowed this appeal and the respondent was directed that the case of the appellant be placed before the DPC for Consideration for Pro-

forma/Notional Promotion to the post of PHC technologist (MP) BPS-17 from the due date. **(Copy of judgment is attached as Annexure-A).**

3. That the appellant also filed application to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal judgment dated 20-12-2022. **Copy of application is attached as annexure-B.**

4. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 20-12-2022.

5. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.

6. 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 implement the same in letter and spirit.

7. 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 20-12-2022 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/appellant.

PETITIONER
Muhammad Saeed

THROUGH:

(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

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.

DEPONENT

Court of Pakistan in its judgment reported as 2021 SCMR 1266 has held as below:-

> *"9. In the present case the DPC has not considered the case for promotion of respondent and the reason assigned is that he has retired. This reason given by the DPC, apparently, is no reason in law, in that, once the Model Working Paper for promotion of respondent was placed before the DPC, it was incumbent upon it to have considered and decided the same, for that, though the law does not confer any vested right to a government servant to grant of promotion but the government servant surely has a right in law to be considered for grant of promotion. It is because of the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement of which the employees could not be made responsible, cannot simply brush aside the case of an employee by merely saying that he has retired. Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent."*

6. Similar in case of "*Secretary School of Education and others Versus Rana Arshad Khan and others*" (2012 SCMR 126), august apex court has held that denial of promotion to a civil servant due to retirement on account of delay occasioned in the Provincial Selection Board meeting, without any justifiable reasons, a civil servant could not be held to suffer for inaction of the concerned Authority."

7. According to the working paper submitted to Departmental Promotion Committee for promotion to the post of Senior PHC Technologist (MP) (BS-17), the appellant was eligible to be considered for promotion in accordance with law, therefore, a legal

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

B (9)

بخدمت جناب اسسٹنٹ رجسٹرار خیبر پختونخواہ انفارمیشن کمیشن پشاور

عنوان: شکایت

جناب عالی!

مودبانہ گزارش ہے کہ چند حقائق آپ کے حضور میں پیش کرنا چاہتا ہوں وہ یہ کہ:-

۱۔ فدوی محکمہ صحت میں 37 سال تک بحیثیت میڈیکل ٹیکنیشن (ملٹی پرپز) کا ڈیوٹی سرانجام دے چکا ہے۔

۲۔ چونکہ 2018 میں 10 ٹیکنیشنز کا (PHC Technalogist BPS-17) کے پروموشن کا پروگرام تھا اُسی لسٹ میں میرا نام بھی شامل تھا۔ ڈائریکٹریٹ کے سٹاف نے ورکنگ پیپر جب بنا دیے گئے تو اُس میں میرا نام شامل نہیں تھا بعد میں پتہ چلا کے پروموشن کیس میں تقریباً 12 بندوں کا پروموشن ہو چکا ہے۔ اور میرا نام لسٹ سے نکالا گیا۔ میں نے اس کے خلاف خیبر پختونخواہ سروس ٹریبونل میں اپیل دائر کی تو مورخہ 22-12-2022 کو میرے حق میں عدالتی فیصلہ آیا کہ فدوی کو گریڈ 17 میں پروموٹ کیا جائے (آرڈر کی کاپی منسلک ہے)۔

۳۔ لہٰذا مورخہ 22-12-2022 کو ٹریبونل کا فیصلہ محکمہ صحت کو ملا ہے مگر تاحال 4½ ماہ گزرنے کے باوجود محکمہ صحت خیبر پختونخواہ نے سائل کا آرڈر PHC Technalogist BS-17 کا حکم جاری نہیں کیا۔

۴۔ آپ صاحبان سے استدعا کی جاتی ہے کہ میرے کیس کے بارے میں محکمہ صحت سے رپورٹ لی جائے۔ عین نوازش ہوگی۔

محمد سعید (ریٹائیرڈ) سینئر پی ایچ سی ٹیکنالوجسٹ

محکمہ صحت خیبر پختونخواہ پشاور

شناختی کارڈ نمبر 17101-5058167-3

موبائل: 0344-1911165

vested right to be considered for promotion had accrued in favour of the appellant but he was wrongly and illegally deprived of the same.

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Departmental Promotion Committee for consideration for pro-forma/notional promotion to the post of PHC Technologist (MP) (BS-17) from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.12.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	10/1/23
Number of Words	Parte 5-Pages
Copying Fee	25/-
Urgent	5/-
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Date of Completion of Copy	10/1/23
Date of Delivery of Copy	10/1/23

A

(3)

(3)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 797 /2018

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1027
Dated 05-6-2

Mr. Muhammad Saeed, (Retired),
Senior PHC technician (Bs-14),
R/o Shah Nawaz Town, Near Mufti Madrassa
Pajagi Road, Basheer Abad.

APPELLANT

VERSUS

1. The Govt: of KPK Through the Chief Secretary KPK Peshawar.
2. The Secretary Health Deptt: KPK Peshawar.
3. The Secretary Finance Deptt: KPK Peshawar.
4. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

Filed to-day
Registrar
5/6/18

Re-submitted to-day and fixed.
Registrar
5/6/18

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNALS ACT, 1974, AGAINST THE PROMOTION ORDER DATED 01.02.2018 WHEREBY JUNIORS IN SERVICE TO THE APPELLANT HAVE BEEN PROMOTED DESPITE THE FACT THAT APPELLANT WAS SENIOR AND WAS IN SERVICE WHEN THE PROMOTIONS POSTS BECAME VACANT / CREATED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

.....

ATTESTED
Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 797/2018

Date of Institution ... 05.06.2018

Date of Decision ... 20.12.2022

Muhammad Saeed, (Retired), Senior PHC Technician (BPS-14), R/O Shah Nawaz Town, Near Mufti Madrassa Pajagi Road, Basheer Abad.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through the Chief Secretary Khyber Pakhtunkhwa Peshawar and 03 others.

... (Respondents)

SYED NOMAN ALI BUKHARI, Advocate --- For appellant.

MR. MUHAMMAD JAN, District Attorney --- For respondents.

SALAH-UD-DIN --- MEMBER (JUDICIAL)
MIAN MUHAMMAD --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"That on acceptance of this appeal, the respondents may be directed to consider the appellant for proforma/notional promotion as PHC Technologist (BPS-17) from his due date with all back and consequential benefits. Any other

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

remedy, which this tribunal deems fit and appropriate that may also be awarded in favour of appellant."

2. Precise averments as raised by the appellant in his appeal, are that he was appointed as Technician in Health Department on 11.12.1985 and was retried as Senior PHC Technician (BS-14) on attaining the age of superannuation on 02.01.2018. Rules for Paramedical posts of Government of Khyber Pakhtunkhwa in Health Department were promulgated on 10th May 2016 vide Notification dated 10.05.2016. Several posts of Senior PHC Technologist (BS-17) were vacant in promotion quota and the appellant was also eligible for promotion, therefore, working paper including name of the appellant was prepared and was sent for promotion to the post of Senior PHC Technologist (BS-17) but the meeting of Departmental Promotion Committee was delayed and the appellant could not be promoted due to his retirement on 02.01.2018. The meeting of the Departmental Promotion Committee was then held on 30.01.2018, wherein colleagues of the appellant as well as his juniors were promoted to the post of Senior PHC Technologist (BS-17). The name of the appellant was though considered in the meeting of DPC held on 30.01.2018 but he was not promoted on the ground that he stood retired on 02.01.2018. Notification regarding promotion of Paramedics to the post of Technologist (BS-17) was issued on 01.02.2018, wherein the name of the appellant was not included; constraining him to file departmental appeal for his

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

notional promotion, however the same was not responded, hence the instant service appeal.

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

4. We have heard the arguments of learned counsel for both the sides and have perused the record with their valuable assistance.

5. A perusal of the record would show that the appellant was serving as Senior PHC Technician (BS-14), when working paper for promotion to the post of PHC Technologist (MP) (BS-17) was prepared and sent to the Departmental Promotion Committee. The same is available on the record and is bearing the name of the appellant reflected at serial No. 09. According to the working paper, there was no legal impediment in the way of the appellant for his promotion to the post of Senior PHC Technologist (MP) (BS-17), however the meeting of Departmental Promotion Committee was delayed and was held on 30.01.2018. According to the minutes of meeting of Departmental Promotion Committee held on 30.01.2018, the appellant was not considered for promotion for the only reason that he had retired on 02.01.2018. Vide Notification dated 01.02.2018, issued upon recommendations of the Departmental Promotion Committee, even juniors of the appellant were promoted to the post of PHC Technologist (MP) (BS-17). August Supreme

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Court of Pakistan in its judgment reported as 2021 SCMR 1266 has held as below:-

> *"9. In the present case the DPC has not considered the case for promotion of respondent and the reason assigned is that he has retired. This reason given by the DPC, apparently, is no reason in law, in that, once the Model Working Paper for promotion of respondent was placed before the DPC, it was incumbent upon it to have considered and decided the same, for that, though the law does not confer any vested right to a government servant to grant of promotion but the government servant surely has a right in law to be considered for grant of promotion. It is because of the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement of which the employees could not be made responsible, cannot simply brush aside the case of an employee by merely saying that he has retired. Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent."*

6. Similar in case of "*Secretary School of Education and others Versus Rana Arshad Khan and others*" (2012 SCMR 126), august apex court has held that denial of promotion to a civil servant due to retirement on account of delay occasioned in the Provincial Selection Board meeting, without any justifiable reasons, a civil servant could not be held to suffer for inaction of the concerned Authority."

7. According to the working paper submitted to Departmental Promotion Committee for promotion to the post of Senior PHC Technologist (MP) (BS-17), the appellant was eligible to be considered for promotion in accordance with law, therefore, a legal

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

vested right to be considered for promotion had accrued in favour of the appellant but he was wrongly and illegally deprived of the same.

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Departmental Promotion Committee for consideration for pro-forma/notional promotion to the post of PHC Technologist (MP) (BS-17) from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.12.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 10/1/23
Number of Words Page 5-Pages
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Date of Delivery of Copy 10/1/23

B (9)

بخدمت جناب اسسٹنٹ رجسٹرار خیبر پختونخواہ انثار میشن کمیشن پشاور

عنوان: شکایت

جناب عالی!

مودبانہ گزارش ہے کہ چند حقائق آپ کے حضور میں پیش کرنا چاہتا ہوں وہ یہ کہ:-

۱۔ فدوی محکمہ صحت میں 37 سال تک بحیثیت میڈیکل ٹیکنیشن (ملٹی پرپز) کا ڈیوٹی سرانجام دے چکا ہے۔

۲۔ چونکہ 2018 میں 10 ٹیکنیشنز کا (PHC Technalogist BPS-17) کے پروموشن کا پروگرام تھا اُسی لسٹ میں میرا نام بھی شامل تھا۔ ڈائریکٹریٹ کے سٹاف نے ورکنگ پیپر جب بنا دیے گئے تو اُس میں میرا نام شامل تھا بعد میں پتہ چلا کے پروموشن کیس میں تقریباً 12 بندوں کا پروموشن ہو چکا ہے۔ اور میرا نام لسٹ سے نکالا گیا۔ میں نے اس کے خلاف خیبر پختونخواہ سروس ٹریبونل میں اپیل دائر کی تو مورخہ 22-12-2022 کو میرے حق میں عدالتی فیصلہ آیا کہ فدوی کو گریڈ 17 میں پروموٹ کیا جائے (آرڈر کی کاپی منسلک ہے)۔

۳۔ لہٰذا مورخہ 22-12-2022 کو ٹریبونل کا فیصلہ محکمہ صحت کو ملا ہے مگر تا حال ۴½ ماہ گزرنے کے باوجود محکمہ صحت خیبر پختونخواہ نے سائل کا آرڈر PHC Technalogist BS-17 کا حکم جاری نہیں کیا۔

۴۔ آپ صاحبان سے استدعا کی جاتی ہے کہ میرے کیس کے بارے میں محکمہ صحت سے رپورٹ لی جائے۔

عین نوازش ہوگی۔

محمد سعید (ریٹائیرڈ) سینئر پی ایچ سی ٹیکنالوجسٹ

محکمہ صحت خیبر پختونخواہ پشاور

شناختی کارڈ نمبر 17101-5058167-3

موبائل: 0344-1911165

بعدالت

KP Service Tribunal.

مورخہ　　　　　محمد صغیر　　　　　سنہ 2ء منجانب

مقدمہ　　　　　بنام

دعویٰ　　　　　ویلکو ڈ ہسپادسشت

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام　پشاور　کیلئے　مسٹر نعمان صاحب [illegible]　کو اپنا وکیل

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہو گا ۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا محتاج ہو گا ۔ 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 ہو گا ۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہو گا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہو گا ۔ 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 لکھدیا کہ سند رہے ۔

Attested & Accepted

المرقوم　　　　　ماہ　　　　　سنہ 20ء

العبد　　　　　گواہ　　　　　العبد