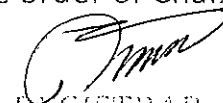


08.08.2023

Form-A
FORM OF ORDER SHEET

Court of

Implementation Petition No. 564/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1		By the order of Chairman
1	08.08.2023	<p>The implementation petition of Dr. Muhammad Nadeem submitted today by Mr. Baseer Ahmad Shah Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>10-8-23</u>. Original file be requisitioned. AAG has noted the next date.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Implementation Petition No 564 /2023

In

Service Appeal No 872/2019

Dr Muhammad NadeemApplicant/Appellant.

V E R S U S

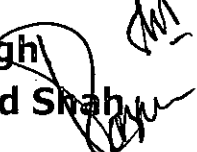
Chief Secretary and Others.....Respondents

I N D E X

S.No	Description of documents	Annexure	Pages
1.	implementation Petition with Affidavit		1-2
2.	Copy of the Order and Judgment dated 09-11-2021	A	3-8
3.	Copy of Letter	B	9
4.	Wakalat Nama		

Dated:-07-08-2023


Applicant/Petitioner

Through 
Baseer Ahmad Shah
&

Ibad Ur Rehman Khalil 
Advocates Peshawar.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell # 0315-0195187

Email:- ibad4565@gmail.com

①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Implementation Petition No 564 /2023

In

Service Appeal No 872/2019

Dr Muhammad Nadeem, Medical Officer/Coordinator, DHQ Hospital Haripur

.....Applicant/Appellant.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6925

Dated 08/08/23

V E R S U S

1. Chief Secretary, Govt. of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
3. Director General, Health services, Govt. of Khyber Pakhtunkhwa Peshawar.

.....Respondents

**PETITION FOR THE IMPLEMENTATION OF
ORDER/JUDGMENT DATED 09-11-2021 PASSED BY THIS
HONORABLE TRIBUNAL IN THE ABOVE TITLED SERVICE
APPEAL.**

Respectfully Submitted:-

1. That the applicant/appellant earlier filed Service Appeal No 872/2019 for his adjustment/posting of the appellant against his post and release of salaries of the appellant w.e.f 28-01-2010 till date which was partially accepted and respondents were directed to issue adjustment/posting order of the appellant against his post vide Order and Judgment dated 09-11-2021. **(Copy of the Order and Judgment is enclosed as Annexure A).**
2. That the applicant/appellant time and again approached respondents for the implementation of the Order and Judgment dated 09-11-2021 of this honorable Tribunal but of no uses. Even he submitted application for the purpose but of no avail. **(Copy of Letter No 20424 dated 14-12-2021 is enclosed as Annexure B).**

- 3. That the respondents have are not ready to implement the Order and Judgment of this honorable Tribunal dated 09-11-2021 in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 09-11-2021 of this honorable Tribunal.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 09-11-2021 passed in Service Appeal No 872/2019 in its true letter and spirit.

Dated:-08-08-2023



Applicant/Petitioner

Through

Baseer Ahmad Shah



&

Ibad Ur Rehman Khalil

Advocates Peshawar



AFFIDAVIT

I, Dr Muhammad Nadeem, Medical Officer/Coordinator, DHQ Hospital Haripur, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Baseer Ahmad Shah



&

Ibad Ur Rehman Khalil

Advocates Peshawar





DEPONENT

③ - 1 - Annex A

Diary No. 831
Dated 30-5-2019

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 872 /2019



Dr. Muhammad Nadeem Medical Officer/Coordinator, DHO Office Haripur.Appellant

V E R S U S

1. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Director General, Health Services, Govt. of Khyber Pakhtunkhwa, Peshawar.Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR ADJUSTMENT/POSTING OF THE APPELLANT AGAINST HIS POST AND RELEASE OF SALARIES OF THE APPELLANT W.E.F 28-01-2010 TILL DATE, REGARDING WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal, the respondents may kindly be directed to adjust/post the appellant against his post and release his salaries w.e.f 28-01-2010 till date.

Respectfully Submitted:-

1. That the appellant was appointed as Medical Officer on 22-11-1995 and on 22-10-1997 his services were regularized and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.

1/5/19
Presented to-day and filed

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.**

Service Appeal No. 872/2019

Date of Institution ... 31.05.2019

Date of Decision ... 09.11.2021



Dr. Muhammad Nadeem Medical Officer/Coordinator, DHO Office
Haripur.

... (Appellant)

VERSUS

Chief Secretary, Government to Khyber Pakhtunkhwa, Civil
Secretariat Peshawar and two others.

... (Respondents)

Mr. FAZAL SHAH MOHMAND,
Advocate

--- For appellant:

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

SALAH-UD-DIN, MEMBER:-

Precisely stated the facts as alleged by the appellant in his appeal are that he was appointed as Medical Officer on 22.11.1995 and his services were later on regularized on 22.10.1997. Vide order dated 07.11.2001, the request of the appellant for proceeding to Saudi Arabia on deputation was allowed; that the deputation period was for two years, however the same was extended from time to time and the appellant thus remained on deputation for seven years; that on 25.08.2008, the appellant submitted an application for extension in his deputation period for further two years.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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however the same was regretted vide order dated 27.10.2008, therefore, the appellant resumed his duty on 03.03.2009; that during the period of his deputation, the appellant deposited contributory provident fund/GP fund etc; that the appellant finally submitted resignation on 28.01.2010 and kept performing his duty for three months, however nothing was conveyed to him regarding the acceptance or otherwise of the resignation tendered by him; that in the year 2013, the appellant submitted application for withdrawal of his resignation, which was duly forwarded to the concerned quarters* vide letters dated 25.09.2013 and 02.03.2017, however no response was received; that the appellant submitted two others applications dated 11.09.2017 and 22.12.2017 to the concerned quarters for withdrawal of his resignation but no response was received by the appellant, therefore, the appellant submitted departmental appeal for acceptance of his arrival on 19.03.2019, which was also not responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the resignation of the appellant has not yet been accepted by the competent Authority, therefore, the service of the appellant is still intact and the respondents are legally bound to issue adjustment/posting order of the appellant against his post; that the appellant cannot be held entitled for in-action of the respondents and they are bound to grant him the arrears of outstanding salary; that the appellant has not been treated in accordance with law and the respondents have violated the relevant law/rules, which has resulted in causing prejudice to the appellant; that the appellant is having about 26 years of service at his credit with an unblemished record, therefore, the respondents are not justified in keeping the appellant in a hanging situation. Reliance was placed on PLD 2007 Supreme Court 52, judgment dated 13.06.2011 passed by this Tribunal

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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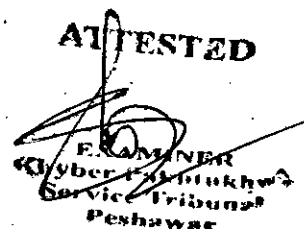
in Service Appeal No. 1689/2010 decided on 13.06.2011 as well as judgment dated 20.10.2021 passed by this Tribunal in Service Appeal No. 4675/2020.

4. On the other hand, learned Deputy District Attorney for the respondents has argued that the appellant did not perform any duty for the period from the year 2009 till date, therefore, he is not entitled to claim any salary for the said period; that the appellant remained absent from duty for more than five years, therefore, in view of FR-18, he has ceased to be a government employee; that the appeal in hand is barred by time and is liable to be dismissed on this score alone; that the appellant had himself submitted resignation, therefore, he is estopped by his own conduct and the appeal in hand is, therefore, liable to be dismissed with cost. Reliance was placed on 2007 SCMR 346 and 2014 SCMR 799.

5. Arguments heard and record perused.

6. A perusal of the record would show that it is an admitted fact that the appellant had resumed his duty on 03.03.2009, when his request for further extension of his deputation period was regretted by the competent Authority. The appellant then submitted his resignation on 28.01.2010, which was forwarded by Director General Health Services Khyber Pakhtunkhwa Peshawar vide letter dated 25.09.2013 addressed to Secretary to Government of Khyber Pakhtunkhwa, Health Department Peshawar. A perusal of the aforementioned letter as well as letter dated 02.03.2017 addressed by Section Officer (E-II) to the Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar would show that it is an admitted fact that the request of the appellant for resignation as well as his request for withdrawal of the resignation were not responded by the competent Authority one way or the other. August Supreme Court of Pakistan in its judgment reported as PLD 2007 Supreme Court 52 has held as below:-

"16. From a bare perusal fo the above instruction it is crystal clear that on mere tendering/submitting of resignation the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
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services of Goernment/Civil Servant would not come to an end and the same has to be accepted for its effectiveness by the competent authority. It also reveals that till such time as the resignation is accepted by the competent authority, the Civil/Government servant would continue to be in Government service and would be under an obligation to perform his duties. In case he fails or omits to perform his duties without prior authorization or leave, he would be deemed to be an absentee rendering himself liable for disciplinary proceedings under the appropriate law and rules. In view of the clear, express and unambiguous language used in instructions at serial No. 13 of the Esta Code there can be no doubt that the resignation tendered/submitted by a civil servant does not become effective/operative unless it is accepted by the competent authority and till such time the resignation is accepted the government/civil servant shall be deemed to be in the service. It will not be out of place to mention there that the above instruction was issued by the Authority, which is competent to amend, modify or alter the laws/rules relating to the terms and conditions of the civil servants, and such instructions would have same force as statutory rules. To substantiate the above proposition, reliance is placed on the judgment of this Court in the case of the Province of West Pakistan and other v. Ch. Din Muhammad and others (PLD 1964 SC 29)".

7. The resignation of the appellant has not yet been accepted by the competent Authority, therefore, the appellant shall be considered to be in service. So far the absence of the appellant from duty is concerned, nothing is available on the record to show that any disciplinary action was taken against him. The appellant has, however failed to show that he has performed any duty after tendering his resignation on 28.01.2010, therefore, he cannot claim any salary for the period during which he had not performed his duty. The contention of learned Deputy District Attorney that in view of FR-18, the appellant has ceased to be a government employee

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
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is misconceived for the reason that FR-18 has been omitted vide Notification No. F.1(11)R.4/89 dated 3rd November 1992.

8. In view of the foregoing discussion, the appeal in hand is partially allowed and the respondents are directed to issue adjustment/posting order of the appellant against his post. The intervening period during which the appellant remained absent from duty may be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.11.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Wh
(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 04-8-23
Number of Words page 5
Copying Fee 25/-
Urgent _____
Total 25/-
Name of Copyist _____
Date of Completion of Copy 07/8/23
Date of Delivery of Copy 07/8/23

DIRECTORATE GENERAL HEALTH SERVICES
KHIBER PAKHTUNKHWA PESHAWAR



The Secretary to Government of
Khyber Pakhtunkhwa Health Department
Peshawar

REQUEST FOR ADJUSTMENT/POSTING ORDER

Enclosed please find herewith a copy an application in respect of
Dr. Muhammad Nadeem S/O Muhammad Saadque Ex-MO (BPS-17, Health
Department requesting for posting/adjustment against the vacant post of MO (BPS-17)
for favor of further necessary work.

It is stated that Dr. Muhammad Nadeem was appointed as MO
(BPS-17) during 22.11.1995 on contract basis. He services were regularized through
Public Service Commission, from 22.10.1997.

It is added that he was granted 07 years deputation to Saudi Arabia
after availing of 07 years deputation to Saudi Arabia his request for further extension
was not approved by the Govt and an absence notice was served upon him during
the period of 07 years deputation. However he submitted several
applications for regularization in the Govt service which was also forwarded to your good office vide this
Directorate letter No. 4988/E-1 dated 20.02.2010.

During August 2013 no action has been intimated to this Directorate
and 28.08.2013, the officer concerned has applied for withdrawal of his resignation as it
has not been accepted by the Govt. His withdrawal application was also forwarded to
your good office vide this Directorate letter No. 24213-14/E-1 dated 25.08.2013.

He filed an appeal in Khyber Pakhtunkhwa Khyber Pakhtunkhwa
Services Tribunal Peshawar for posting/adjustment in Health Department Khyber
Pakhtunkhwa

The Khyber Pakhtunkhwa Services Tribunal had allowed his appeal
and directed to issue posting/adjustment order in respect of the doctor concerned
against his post and treat his absence period as EOL without pay (copy attached).

It is therefore requested that necessary orders of the Govt may
please be conveyed in this matter.

Handwritten: (9)
Handwritten: Annex B

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Legible Copy

DIRECTORATE GENERAL HEALTH SERVICES

KHYBER PAKHTUNKHWA PESHAWAR

No 20424

dated 14/12/2021

To,

The Secretary to Government of
Khyber pakhtunkhwa Health department
Peshawar.

Subject: **REQUEST FOR ADJUSTMENT/POSTING ORDER.**

Enclosed please find herewith a copy an application in respect of Dr Muhammad Nadeem S/O Muhammad Siddique Ex.MO(BPS 17) health department requesting for posting/adjustment against the vacant post of MO (BPS 17) for favour of further necessary action.

It is stated that Dr Muhammad Nadeem was appointed as MO (BPS 17) during 22-11-1995 on contract basis. His services were regularized through public service commission W.E.F from 22-10-1997.

It is added that he was granted 07 year deputation to Saudi Arabia after availing of 07 year deputation to Saudi Arabia his request for further extension was not honoured by the govt and an absence notice was served upon him during January 2008 for his willful absence since 25-10-2008.however he submitted he submitted his arrival report in this directorate on 03-03-2009 which was forwarded to your good office vide this directorate letter No 10266/E-I dated 11-03-2009.in January 2010 he tendered resignation from govt service which was also forwarded to your good office vide this directorate letter No 4988/E-I dated 20-02-2010.

During august 2013 no action has been intimated to this directorate and 29-08-2013 the officer concerned has applied for withdrawl of his resignation as it has not been accepted by the govt. his withdrawl application was also forwarded to your good office vide this directorate letter No 24513/14/E-I dated 25-09-2013.

He filed an appeal in Khyber pakhtunkhwa services tribunal Peshawar for posting adjustment in health department Khyber pakhtunkhwa.

The Khyber pakhtunkhwa services tribunal has allowed his appeal and directed to issue posting/adjustment order in respect of the doctor concerned against his post and treat his absence period as EOL without pay (copy attached).

GA

It is therefore requested that necessary order of the govt may please be coneyed in the matter.

DIRECTOR GENERAL HEALTH

Services Khyber pakhtunkhwa.

VAKALATNAMA

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Dr. Muhammad Nadeem.....Petitioner/Appellant.

VERSUS


Govt of others..... Respondents/Defendants.

We the undersigned, do hereby appoint and constitute,

BASEER AHMED SHAH Advocate To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND we hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 8-8-2023.



Client (s)

NIC-13302-0350621-5

CELL-0335-9832000

BASEER AHMED SHAH

&

IBAD UR REHMAN KHALIL

Advocate
Peshawar

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar

Cell # 0320-1946985

Email: ahmedbaseer234@gmail.com