


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 632/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2023	<p>The implementation petition of Mr. Ashfaq Ahmad submitted today by Mr. Nasir Khan Abbakhel 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</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Miscellaneous petition No 632 /2023

Khyber Pakhtunkhwa
Service Tribunal

D/S No. 7515

Date 13/09/23

ASHFAQ AHMAD S/O NAZEER AHMAD R/O ARBABAN
MATTA TEHSIL PINDYALI DISTRICT
MOHMAND.....PETITIONER

VERSUS

1. THE SECRETARY HEALTH DEPARTMENT CIVIL
SECRETARIETE KHYBER PAKHTUNKHWA
2. THE DIRECTOR GENERAL HEALTH SERVICES KHYBER
PAKHTUNKHWA
3. THE DEPUTY DIRECTOR HEALTH OFFICES SUB
DIVISION HASSAN KHEL PESHAWAR
4. THE DISTRICT HEALTH OFFICER DISTRICT
PESHAWAR.....RESPONDENTS

**PETITION FOR IMPLEMENTATION OF
THE ORDER AND JUDGMENT OF THIS
HONORABLEm TRIBUNAL DATED
16/06/2023.**

Respectfully Sheweth:

1. That the petitioner filed appeal against the respondents before this honorable tribunal and after submission of written reply by the respondents the case was fixed for arguments.
2. That after arguments of both of the parties this learned tribunal allowed the appeal of the petitioner as prayed for. (Copy of judgment dated 16/06/2023 is attached)

3. That the petitioner after getting the attested copies of the said judgment visited the respondents to assign the duty to the petitioner alongwith releasing the salaries due against the respondents but the respondent till date using delay tactics and intentionally avoiding the order and judgment of this honorable tribunal.

4. That the petitioner visited time and again the respondents to honor the order and judgment of this honorable tribunal but few days back the respondents denied to honor the judgment of this honor able tribunal, hence the petitioner filed the instant petition

It is therefore, most humbly prayed that by accepting this petition the order and judgment of this honorable tribunal may kindly be implemented against the respondents.

Any other relief not specifically asked and deems appropriate by this Hon'ble Court may also be granted in favour of the petitioner.

استغاثہ

Petitioner

Through

Nasir Khan AbbaKhel
Advocates, Peshawar

CERTIFICATE:

Certified that no such like petition has earlier been filed before this Hon'ble Court.

ADVOCATE

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.52/2022

Date of presentation of Appeal.....13.01.2022
Date of Hearing.....16.06.2023
Date of Decision.....16.06.2023

**Mr. Ashfaq Ahmad S/O Nazeer Ahmad, R/O Arbaban Matta Tehsil
Pindiwali, District Mohmand.**

.....*Appellant*

Versus

1. **The Secretary Health Department, Civil Secretariat, Khyber Pakhtunkhwa.**
2. **The Director General Health Services, Khyber Pakhtunkhwa.**
3. **The Deputy Director, Health Officers, Sub Division Hassan Khel, Peshawar.**
4. **The District Health Officer, District Peshawar.**
5. **The Accountant General, Khyber Pakhtunkhwa, Peshawar.**

.....(*Respondents*)

Present:

Mr. Nasir Khan Abbakhel, Advocate.....For
appellant

Mr. Muhammad Jan, District AttorneyFor respondents.

APPEAL AGAINST ACT/ORDER (IF ANY) OF THE
RESPONDENTS, WHEREIN, THE RESPONDENTS
WITHOUT ANY LEGAL JUSTIFICATION, THE
PETITIONER'S SALARY FROM JUNE, 2021 HAS BEEN
STOPPED.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are

that appellant was appointed as Driver in the Regional Program

Implementation Unit (FATA) by the Ex-Director Health Service

(FATA) Secretariat vide Notification NO.620-22/ASM/NP dated

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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10.11.2017. In the meanwhile, vide Notification No.DHS/FATA/3357-90 dated 27.02.2013, the services of the appellant were regularized vide order dated 01.10.2019, the appellant was appointed as Medical Technician (BPS-12) at Sub Division Hassan Khel, District Peshawar, through proper channel. All of a sudden, while serving as Medical Technician, his salary was stopped. Feeling aggrieved, he filed departmental appeal to respondent No.4 which was not responded, hence, this appeal.

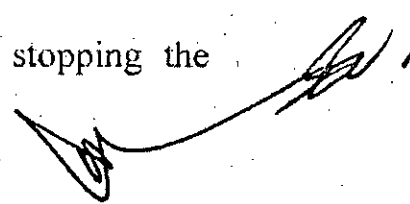
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard appellant and learned District Attorney for the respondents.

4. Learned counsel for the appellant argued that the impugned action of the respondents was illegal, against the principles of administration of justice and without authority, therefore, the same was not tenable. Further submitted that the impugned action of the respondents was not qualifying the requirements of fundamental rights prescribed by the law and the same had been passed in absolute vacuum. Lastly, he submitted that in the light of judgment of the Apex Court, the salary of a public servant could not be stopped, but despite that, the respondents had committed misconduct by stopping the

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salary of the appellant. Therefore, he requested for acceptance of the instant service appeal.

5. As against that learned District Attorney argued that when the appellant had been appointed as Driver (BPS-06), then how he had been appointed as Medical Technician (BPS-12) as the eligibility criteria for Medical Technician was two years Technical Diploma from Medical Faculty Khyber Pakhtunkhwa. Further submitted that before the merger of the FATA, many irregularities were present and hundreds of ghost employees had been working and getting salaries unlawfully; that similar nature Writ Petitions had been dismissed by the Hon'ble Peshawar High Court. Lastly, he submitted that there was no attendance of the appellant in the department. Therefore, he requested for dismissal of the instant service appeal.

6. The entire defense of the respondents is their reply in Para-03, which is as under:

"As the appellant was appointed as Driver (BPS-06) by the Director Health Services (FATA) dated 10.11.2017, then how the appellant was appointed a Medical Technician (BPS-12) at Sub Division Hassan Khel District Peshawar dated 01.10.2019. Needless to mention that for Medical Technician, two years Technical Diploma from Medical Faculty Khyber Pakhtunkhwa Peshawar is must & mandatory. Then how the appellant without two years Medial Diploma is appointed as Medical Technician (BPS-12). Furthermore, it is stated that before the merging of FATA Districts, many irregularities

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were present and hundreds of ghosts employees were working and getting their salaries unlawfully and the appellant was also one of among them. Similar nature Writ Petitions were dismissed by the Hon'ble Peshawar High Court recently i.e. WP No.5010-P/2021 & WP No.812-P/2021. In these petitions, a list of GHOSTS employees were submitted and the same appellant is also among those Ghosts employees which is on Serial No.18".

7. It appears from the above that the respondents admit the appointment of the appellant as Driver (BPS-06) on the orders of Director Health Service (FATA) dated 10.11.2007. They also, somehow the other, admit that the appellant was appointed as Medical Technician (BPS-12) at Sub Division Hassan Khel, District Peshawar dated 01.10.2019 but they pose a question as to how he was appointed as he was not having the requisite qualification/eligibility criteria for appointment against the post of Medical Technician. This is very strange because the appellant was serving under the respondents and it would be the respondents to have answered their own query instead of making this query a part of reply. If the appellant was appointed as Medical Technician somewhere in the year 2019 and his appointment order was not fake or there was some irregularity or illegality found in appointment of the appellant as Medical Technician (BPS-12), in any of such eventuality, the department is always at liberty to inquire into the matter and to make appropriate order in accordance with law. Admitting the appointment and then stoppage of salary without any

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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inquiry or without withdrawal/cancelation of the appointment order of the appellant as Medical Technician, would not be justified. Therefore, on allowing this appeal, we direct that the appellant be paid all the withheld dues as per his entitlement for his work against the post of Medical Technician (BPS-12). The department may, at its discretion, conduct inquiry duly associating the appellant to probe into the factum of appointment of the appellant as Medical Technician and in case it is found, in the proper inquiry proceedings that the appointment of the appellant, as Medical Technician (BPS-12), was either irregular or illegal or fake etc., the authority may pass appropriate order accordingly by imposing any penalty on the appellant or else, also deciding about the fate of the appellant as Driver in the circumstances of which come out after holding proper inquiry. The appeal is decided in the above terms. Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of ~~July~~ ^{June}, 2023.

KALIM ARSHAD KHAN
Chairman

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

RASHIDA BANO
Member (Judicial)

Mutazem Shah

Date of Presentation of Application 08/9/23
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Date of Completion of Copy 12/9/23
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پشاور بار ایسوسی ایشن، خیبر پختونخوا

[Handwritten Signature]

ایڈوکیٹ:

PESHAWAR BAR ASSOCIATION



بار کونسل ایسوسی ایشن نمبر: 3610-12-DC

رابطہ نمبر: 0313-9955020

بعدالت جناب: سر مسز لہنا گل محمدی صاحبہ، محکمہ خواتین

دعویٰ: <i>سہ ماہی</i>	منجانب:
علت نمبر:	اشفاق احمد
مورخہ:	
جرم:	
تھانہ:	

بنام
مسکدہ لہنا گل محمدی صاحبہ

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام *لہنا گل محمدی* کیلئے *محمد زریب خان* کے نام پر *کوٹل* تقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کالم اختیار ہوا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقررات و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا بکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگہبانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHA

المرقوم: /20

بداوا شد العبد

مقام کے لیے منظور ہے۔

اشفاق احمد