Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 663 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.09.2023	The implementation petition submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 27-09-2023. Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

CHECK LIST

Case Title: M. Tayyab Abbas **Vs** Health Dept

S#	CONTENTS	Yes	No
1.	This Appeal has been presented by	✓	
2.	Whether counsel / appellant / respondent / deponent have signed the requisite document?	✓	
3.	Whether appeal is within time?	✓	
4.	Whether appeal enactment under which the appeal is filed is mentioned?	✓	
5.	Whether enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal / annexure are properly paged?	✓	
9.	Whether certificate regarding filling any earlier appeal in the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/ clear?	✓	
13.	Whether copies of appeal is delivered to AG/ DAG?	✓	
14.	Whether Power of Attorney of the counsel engaged is attested and signed by Petitioner/ Appellant/ Respondents?	✓	
15.	Whether number of referred cases given are correct?	✓	
16.	Whether appeal contains cutting / overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies are attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are completed?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether security and process fee deposited? On _____	✓	
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rule 1974 rule 11, Notice along with copy of appeal and annexure has been sent to respondents? On _____		✓
26.	Whether copies of comments / replay/ rejoinder submitted? On _____		✓
27.	Whether copies of comments / replay/ rejoinder provided to opposite party? On _____		✓

It is certified that formalities /documentations as required in the above table, have been fulfilled.

Name:- نور محمد خٹک

Signature: - _____

Dated: -

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

EXECUTION PETITION NO. 663 /2023
In
SERVICE APPEAL NO.1700/2022

MUHAMMAD TAYYAB ABBAS VS HEALTH DEPARTMENT

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5.	Referred Rule of Business, 1985	C	20-22
6.	Departmental Appeal dated 04.08.2023	D	23
7.	Vakalatnama	--------	24

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
Advocate, Supreme Court of Pakistan
TF-291, 292, Deans Trade Centre,
Peshawar Cantt:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

EXECUTION PETITION NO. 663 /2023
In
SERVICE APPEAL NO.1700/2022

7854
25/09/23

Muhammad Tayyab Abbas Chief Drug Inspector (BS-19),
O/O the Services Hospital Peshawar.

.....APPELLANT

VERSUS

1- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.
3- The Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa Peshawar.

.....RESPONDENTS

IMPLEMENTATION/EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT PASSED VIDE DATED: 13/07/2023 IN SERVICE APPEAL NO.1700/2022 TITLED AS MUHAMMAD TAYYAB ABBAS VS HEALTH DEPARTMENT & OTHERS IN TRUE LETTER & SPIRIT.

R/SHEWETH:

1- That, the appellant filed a Service Appeal bearing office No. 1700/2022 before this august Service Tribunal in which the appellant impugned the notification issued vide date 22-08-2022, on account of using the ***illusive & elusive*** Term of ***"Competent Authority"***.

Secretary/Registrar 25/09/23

(Copy of the notification vide dated 22-08-2022 attached as Annexure ----------A).

2- That, the appeal of the appellant was admitted for regular hearing & was finally heard on 13-07-2023 and as such the ibid appeal was ordered in concluding Para which is reproduced as;

"Therefore, while dismissing these appeals, we direct that the Judgment of Supreme Court of Pakistan shall be acted upon by modifying the impugned notification accordingly within 15 days of receipt of this judgment under intimation to the Tribunal through its Registrar.

(Copy of the relevant Parts of the judgment vide dated 13.07.2023 attached as Annexure.....B).

3- That, according to Khyber Pakhtunkhwa Rules of Business, 1985, the Rule **"17 (1)"** speaks about the Posting of civil servants while appending the Schedule –**III**, which shows their grade wise ranks at S.No.3 in Column 1 & the authorities who are competent to transfer them in Column 2, which is relevant to the undersigned being an employee of BS-19.
(Copy of rule ibid attached as Annexure ----------C).

4- That, strengthening the above stance, the appellant in this regard also preferred a departmental appeal vide dated 04-08-2023, to comply with the above judgment of this August Service Tribunal in light of the referred rule of Rules of Business, 1985, while specifying the stipulated period of fifteen days which was not executed/implemented even after the expiry of aforementioned deadline by the respondents so far till date.
(Copy of departmental appeal vide dated 04-08-2023 attached as Annexure ----------D).

5- That, keeping the mala fide intention of the respondent Department by non-complying with the relevant part of the judgment ibid, the appellant having no other remedy but to file this execution petition for the favour of proper compliance of the judgment passed by this august Service Tribunal to the extent of the appellant.

It is therefore, most humbly prayed that on acceptance of the instant execution Petition, the respondents may kindly be directed to implement properly the judgment passed in true letter & spirit without wasting the precious time of august Service Tribunal as well as also to avoid unnecessary rounds of litigation. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

APPELLANT
MUHAMMAD TAYYAB ABBAS

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT.

AFFIDAVIT.

Stated on oath, that the contents of the accompanying **Execution Petition** are correct to the best of my knowledge and belief while nothing has been concealed from this Honorable Service Tribunal.

DEPONENT

ATTESTED NOTARY PUBLIC

-3- -A-

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 22nd August, 2022

NOTIFICATION

SOH-III/7-262/2022(Drug Inspector): In compliance of the Services Tribunal, Peshawar judgment dated 06-12-2021 in Service Appeal no 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19.	Chief Pharmacist (BS-19), KDA, Kohat.	Chief Drug Inspector (BS-19), District D.I Khan	Against the vacant post.
2.	Tayyab Abbass Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar.	Chief Drug Inspector (BS-19), District Abbottabad.	Against the vacant post.
3.	Amin ul Haq Senior Drug Inspector BS-18	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
4.	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar.	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17), District Peshawar.	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17), District Dir Lower.	Drug Inspector (BS-17), District Bannu.	Against the vacant post.
7.	Muhammad Shoaib Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.	Drug Inspector (BS-17), District Karak.	Against the vacant post.

-sd-
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst of even No and Date.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
3. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
4. Medical Superintendent, DHQ Hospital, concerned.
5. Medical Superintendent, Services Hospital, Peshawar.
6. District Health Officer concerned.

ATTESTED

BETTER COPY OF THE PAGE NO.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 22nd August, 2022

NOTIFICATION

SOH-III/7-262/2022(Drug Inspection). In compliance of the Services Tribunal Peshawar judgment dated 06-12-2021 in Service Appeal No. 16578/2020 and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S.No.	Name of Officers & Designation	From	To	Remarks
1	Syed Muhammad AsadHalimi Chief Durg Inspector BS-19	Chief Pharmacist (BS-19) KDA Kohat	Chief Pharmacist (BS-19) District D.I.Khan	Against the Vacant Post
2	TayyabAbbass Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Pharmacist (BS-19) District Abbottabad	Against the Vacant Post
3	Amin UlHaq Senior Drug Inspector BS-18	Already under report to DG, DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
4	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18) Services Hospital Peshawar	Drug Analyst (BS-18) Drug Testing Laboratory (DTL) Peshawar	Against the Vacant Post
5	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17) District Peshawar	Drug Inspector (BS-17) District Dir Lower	Against the Vacant Post
6	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir Lower	Drug Inspector (BS-17) District Bannu	Against the Vacant Post
7	Muhammad Shoaib Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8	Shazada Mustafa Anawar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the Vacant Post

-Sd-
Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst of even No. and Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
3. Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
4. Medical Superintendent, DHQ Hospital, concerned.
5. Medical Superintendent, Services Hospital, Peshawar.
6. District Health Officer concerned.
7. In-charge Drug Testing Institute

ATTESTED

"B" -5-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL No. 1700 /2022

Muhammad Tayyab Abbas Chief Drug Inspector (BS-19) Health Department.

.....APPELLANT

VERSUS

1- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.
3- The Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION -4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22-08-2022 ISSUED IN SHEER VIOLATION OF THE APEX COURT'S JUDGMENT REPORTED IN 2022 S C M R 439 READ WITH LETTER DATED 14-02-2022, JUDGMENT OF THE AUGUST PESHAWAR HIGH COURT DATED 28-09-2022 RENDERED IN W.P No. 3508-P/2022 RESPECTIVELY, WHILE PARTIALLY EXECUTING THE JUDGMENT OF THIS AUGUST TRIBUNAL DATED 06-12-2021 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED NOTIFICATION DATED 22.08.2022 MAY VERY KINDLY BE SET ASIDE TO THE EXTENT OF THE APPELLANT ON ACCOUNT OF USING THE ILLUSIVE & ELUSIVE *(ILLEGAL & UTTERLY MEANINGLESS)* TERM OF *"COMPETENT AUTHORITY"* AND THE RESPONDENTS MAY KINDLY BE DIRECTED NOT TO TRANSFER/POST THE APPELLANT UNDER THE GARB OF A BAN & ILLEGAL TERM OF *"COMPETENT AUTHORITY"* FROM HIS PREVOIUS PLACE OF POSTING i.e CHIEF DRUG INSPECTOR DISTRICT MARDAN IN PERSUANCE TO A NOTIFICATION DATED 30-04-2020, WHICH WAS ANNULED BY THIS AUGUST TRIBUNAL VIDE DATED 06-12-2021. THAT THE RESPONDENTS MAY FURTHER PLEASE BE DIRECTED TO ACT UPON/IMPLEMENT PROPERLY THE JUDGMENT OF THE APEX COURT REPORTED IN 2022 S C M R 439 READ WITH LETTER DATED 14-02-2022, JUDGMENT OF AUGUST PESHAWAR HIGH COURT DATED 28-09-2022, WHILE PARTIALLY EXECUTING THE JUDGMENT OF THIS AUGUST SERVICE TRIBUNAL DATED 06-12-2021, IN ITS TRUE LETTER & SPIRIT REGARDING THE AFOREMENTIONED

ATTESTED

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.1700/2022

Date of presentation of Appeal.....29.11.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. Muhammad Tayyab Abbas, Chief Drug Inspector (BPS-19), Health Department, Police Services Hospital, Peshawar.....*Appellant*

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
3. **The Director General,** Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Service Appeal No.1748/2022

Date of presentation of Appeal.....06.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. Zia Ullah, Drug Inspector (BPS-17), Health Department Khyber Pakhtunkhwa Peshawar under transfer to District Bannu.....*Appellant*

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
3. **The Director General,** Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Service Appeal No.1873/2022

Date of presentation of Appeal.....20.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. S.M Asad Halimi, Chief Drug Inspector (BS-19) District Kohat
.....*Appellant*

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
1. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
2. **The Director General,** Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

---

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.08.2022 ISSUED IN SHEET VIOLATION OF THE APEX COURT'S JUDGMENT REPORTED IN 2022 SCMR 439 READ WITH LETTER DATED 14.02.2022, JUDGMENT OF THE AUGUST PESHAWAR HIGH COURT DATED 28.09.2022 RENDERED IN W.P NO.3508-P/2022 RESPECTIVELY, WHILE PARTIALLY EXECUTING THE JUDGMENT OF THIS AUGUST TRIBUNAL DATED 06.12.2021 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANTS WITHIN STATUTORY PERIOD OF NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above three appeals are being decided as they as similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. Facts of the appeals as enumerated in the memoranda and grounds are summarized as under:

a. **Muhammad Tayyab Abbas SA 1700 of 2022:**

Earlier against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Mardan to the post of Chief

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

Pharmacist Services Hospital, Peshawar, the appellant Tayyab Abbas filed SA No.10535/2020 with the following prayer:

> *"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-*
> *i. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
> *ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
> *iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
> *iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

b. **Ziaullah SA 1748 of 2022**

Against his transfer, vide order dated 06.10.2020, from the post of Drug Inspector Lower Dir to the post of Pharmacist DHQ Hospital, Lower Dir, the appellant Ziaullah filed SA No.16579 of 2020 with following prayer:

> *"That on acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Control Unit, Temargara, District Dir Lower. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."*

c. **SM Asad Halimi SA 1873 of 2022**

Against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Kohat to the post of Chief Pharmacist

ATTESTED

ATTESTED

DHQ Hospital, KDA, Kohat, the appellant SM Asad Halimi filed SA No. 10301 of 2020 with the following prayer:-

> *"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-*
> *j. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
> *ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
> *iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
> *iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

3. The appeals of the appellants and others were decided on 06.12.2021 vide consolidated judgment passed in SA No.16578 of 2020 titled "Manzoor Ahmad versus Chief Secretary and others", in the following manner:

> *"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. **Consequently, the impugned order is set aside and respondents are directed no to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be.**"*

It is the contention of the appellants in these appeals that instead of compliance of the judgment dated 06.12.2021 to the respective prayers of the appellants, issued an impugned transfer Notification on

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

ATTESTED

30.04.2022 (in cases of appellant Tayyab Abbas and SM Asad Halimi) & Notification dated 22.08.2022 (in the case of Ziaullah appellant), under the garb of compliance, transferring the appellants from their respective places of postings to other stations; that the appellants filed departmental appeals but those were not decided within 90 days compelling the appellants to file these appeals.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. They put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellants. It was mainly contended that the matters of transfer of the appellants had already been adjudicated by this Tribunal on 31.10.2022 in execution Petition No.4821/2021 and by the honourable Peshawar High Court in WP No.3508-P/2022, therefore, the appeals were hit by the principle of res-judicata; that after issuance of the Notifications dated 30.04.2022 and 22.08.2022, the appellants filed execution applications to get the above notifications set aside but the Tribunal decided the execution applications jointly through order dated 31.10.2022 in the following manner:

> *"In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the*

ATTESTED

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
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judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."

5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned orders.

7. In the earlier round of litigation, the contention of the appellants was that they should not be posted against wrong cadres, which contention was allowed by the Tribunal in its Judgment dated 06.12.2021 and vide Notification dated 22.08.2022, in compliance with the said judgment, the appellants and others were posted against their original posts/assignments/cadre. The stance of the appellants in the execution petitions, filed by them, was to get implemented the judgment dated 06.12.2021 passed in SA No.16578/2021. According to them, their subsequent transfer, to other stations, vide Notification dated 22.08.2022, could not be made in lieu of the judgement. The prayers in these appeals are also the same as they want to set aside their transfer order made by the official respondents in compliance with the judgment dated 06.12.2021. The instant appeals are thus hit by rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Rule 23 of the above Rules is as under:

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ATTESTED

EXAMINER
Khyber Pakhtunkhwa
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Peshawar

> **"23. No entertainment of appeal in certain cases:**-No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."

Word 'matter' has been used in the above rule. The matter of subsequent transfers and postings of the appellants from their previous places/stations, made vide the impugned Notification, is directly and substantially in issue in these appeals. The same issue was agitated by the present appellants in the execution applications when their subsequent transfer order was made on 22.08.2022. The appellants had urged in the execution applications that in view of the judgment dated 06.12.2021, they could not be transferred vide order dated 22.08.2022 from their previous place(s)/station(s) of posting, while, as aforesaid, in these appeals, their prayers are also the same. Therefore, the matter directly and substantially in issue in these appeals was decided by the Tribunal while deciding the execution applications on 31.10.2022. These appeals are thus hit by the principle of res-judicata.

The matters of the impugned transfer orders of the appellants were taken up and decided in the execution applications filed by the appellants prior to their filing of these appeals. The same were decided by the Tribunal on 31.10.2022 in detail. The relevant portion of the order deciding such matters, is as under:

> *"12. During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated*

ATTESTED

Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

22.08.2022, vide which the petitioners were dealt with in the following manner:-

S. No	Name of Officers & Designation	From	To	Remarks
1	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG.DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District 17, District, Dir Lower.	Against the vacant post
6	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG. DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post.

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he

ATTESTED

had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation. It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

> *"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable? "*

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True

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> *that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of **DRUG INSPECTOR** or **DRUG ANALYST** as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.*
>
> *18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decree/order strictly in the terms of the same.*
>
> *19. In the above state of affairs when we see the notification dated 22.08.2022,issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."*

8. On merits, we see no good ground to set aside the impugned order/transfer Notification rather the same appears to us to be in conformity with the terms of the earlier judgment of the Tribunal handed down in Service Appeal No.16578 of 2021 as regards posting of the officers against their own cadre posts while as regards the contention of the appellants that they ought not to have been transferred from their previous places/stations of postings, it has no force being ill founded. It

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may be added that the appellants Muhammad Tayyab Abbas and SM Asad Halimi, both, were Chief Drug Inspectors (BPS-19) and were transferred against the wrong cadre of Chief Pharmacists (BPS-19) while the appellant Ziaullah was Drug Inspector (BPS-17) and was transferred on 06.10.2020 against the wrong cadre of Pharmacist (BPS-17). Some others were also transferred in the same order. All the aggrieved persons, including the appellants, filed appeals that they should not be transferred against wrong cadre. Their pleas were accepted. They were consequently transferred vide the impugned Notification dated 22.08.2022 but the appellants are again aggrieved and contend that they should not have been transferred even from the stations they were earlier posted. The only ground taken by the appellants is that the impugned transfer Notification was against the terms of the Judgment dated 06.12.2021 of this Tribunal. When we peruse the judgment, it is not like that, rather the crux of the judgment is that the appellants of those appeals, including the present appellants, should not be posted against wrong cadres and this is what the respondents have done vide the impugned Notification. Now, for the transfer of a civil servant from one station/place, the Government of Khyber Pakhtunkhwa has devised/notified a posting/transfer policy setting out certain conditions but none of those conditions are pressed in the service appeals by either of the three appellants. Otherwise it is the prerogative of the Government under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to post a civil servant anywhere in the province. Section 10 is reproduced below:

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> *"10. Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government"*

Therefore, in the absence of any ground much less convincing, the impugned transfer Notification is hardly open to any exception.

9. Now coming to the second contention of the appellants that the impugned Notifications of Transfer were in sheer violation of the judgment of the Supreme Court of Pakistan reported as "2022 SCMR 439", it is observed that before filing of these appeals, a writ petition No.3508/2022 was filed in the Peshawar High Court with the same contention. The Peshawar High Court decided the writ petition on 28.09.2022 with the observation that this Tribunal was very much clothed with the jurisdiction and authority to implement the decision of the august Apex Court in terms of Articles 189 and 190 of the Constitution and petitioners can validly agitate the same before this Tribunal. Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 is as under:

> *"**189. Decisions of Supreme Court binding on other Courts.**-Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan."*

Article 190 is also reproduced:

> *"**190. Action in aid of Supreme Court.**-All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court."*

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Under Article 189 of the Constitution of Islamic Republic of Pakistan the decision of the Supreme Court of Pakistan to the extent that decides a question of law or is based upon or enunciates a principle of law has been made binding on all other courts in Pakistan yet in a case reported as *Shahid Pervaiz v Ejaz Ahmad and others 2017 SCMR 206*, the Supreme Court of Pakistan held as under:

> *"A fourteen Member Bench of this Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483), has concluded that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoys a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of law".*

Therefore, and especially when the Establishment Department of the Government of Khyber Pakhtunkhwa, vide letter No.SO(Lit-I)E&AD/1-1/2020 dated 14.02.2022 circulated the relevant part of the above judgment of the Supreme Court, amongst all the functionaries of the provincial government with the direction to comply with the orders/directions contained in the said judgment in letter and spirit in future, the mere mentioning of the words 'Competent Authority' and missing the name(s) of such Competent Authority in the impugned Notification dated 22.08.2022 besides not writing name under the signature of the Secretary to Government of Khyber Pakhtunkhwa Health Department, both, are not in compliance with the directions of the august Supreme Court of Pakistan. The directions given in the

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Judgment was to issue requisite orders/directions to all the Courts and Departments/functionaries that they, semi-government and statutory organizations, whenever issuing notifications, orders, office memoranda, instructions, letters and other communications must disclose the designation and the name of the person issuing the same **to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.** The purpose of the direction of writing designation and name has been specified by the Supreme Court in the above underlined portion. Since the appellants have only prayed that the respondents might be directed to act upon/implement properly the judgment of the Supreme Court of Pakistan.

10. Therefore, while dismissing these appeals, we direct that the Judgment of Supreme Court of Pakistan shall be acted upon by modifying the impugned Notification accordingly within 15 days of receipt of this Judgment under intimation to the Tribunal through its Registrar. Costs to follow the event. Consign.

11. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of July, 2023.***

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/7/23
Number of Words 14
Copying Fee 10/-
Urgent
Total 10/-
Name of Copyist
Date of Completion 04/8/23
Date of Delivery of Copy 04/8/23

Mutazem Shah

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GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(Regulation Wing)

NOTIFICATION

Peshawar the, dated 6th April, 1985.

No. SO(O&M) S&GAD/3-3/1985,---In pursuance of the provision contained in Article 139 of the constitution of the Islamic Republic of Pakistan and in suppression of the North-West Frontier Province Government Rules of Business, 1972, the Governor of the North-West Frontier Province is pleased to make the following rules:

PART - A ----- GENERAL

1. *SHORT TITLE AND COMMENCEMENT.*

(1) These rules may be called the North-West Frontier Province Government Rules of Business, 1985.

(2) They shall come into force at once.

2. *DEFINITION .---* In these rules, unless the context otherwise requires.

(a) *"Assembly"* means the Provincial Assembly of the North-West Frontier Province;

(b) *"Attached Department"* means a Department mentioned in column 3 of *Schedule-I;*

(c) *"Business"* means all work done by Government;

(d) *"Cabinet"* means the Cabinet of Ministers appointed under Article 132 of the Constitution and includes the Chief Minister appointed under Article 130 of the Constitution;

(e) *"Case"* means a particular matter under consideration and includes all papers relating to it and required to enable the matter to be disposed of, viz: correspondence and notes and also any previous papers on the subject or subjects covered by it or connected with it;

(f) *"Chief Secretary"* means the officer notified as such in the Gazette, who shall in addition to other Departments and functions that may be allotted to him

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PART-C - SERVICES

15. *PUBLIC SERVICE COMMISSION.-*

The advice of the Public Service Commission shall ordinarily be accepted by the Department in all matters where it is obligatory to consult the Commission under any rules or regulations for the time being in force. If it is proposed not to accept the advice of the Commission, it shall be submitted to the Chief Minister through the Establishment and Administration Department, who may give an opportunity to the Public Service Commission of further justifying its recommendation before a final decision is taken.

16. *SELECTION BOARD.-*

(1) Government may constitute one or more Selection Boards and specify the appointments and promotions to posts, other than those to be made on the advice of the Public Service Commission, to be made on the advice of such Selection Boards.

(2) *Difference between Selection Board and the Department.-* In any case, a Department does not propose to accept the advice of Selection Board in regard to a matter in which its advice is required under sub-rule (1), the case shall be returned to the Selection Board for reconsideration, and the Selection Board shall reconsider such case. If on reconsideration the difference still persists, the case shall be submitted to the Chief Minister through the Establishment and Administration Department, for his orders.

17. POSTING.-

(1) Transfer of Officers shown in column 1 of *Schedule-III* shall be made by the authorities shown against such Officers in column 2 thereof.

(2) The Establishment and Administration Department shall be consulted if it is proposed to-

(a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and

(b) Require an officer to hold charge of more than one post for a period exceeding four months.

PART-D - CABINET PROCEDURE

ATTESTED

SCHEDULE-III
[See Rule 17(1)]

TRANSFER OF OFFICERS

	1	2
S. No	*Outside the Secretariat*	
1.	Officers of the all Pakistan unified group e.g., DMG, Police Group, etc.	Establishment and Administration Deptt: in consultation with the Department concerned.
2.	Other Officers holding senior scale posts normally held by Officers of the all PUG and Police Group.	--do--
3.	Head of Attached Departments and other Officers in BS-19 and above in all Department.	--do--
	In the Secretariat:-	
4.	Secretaries.	Establishment & Administration Department.
5.	Other Officers of and above the rank of Section Officers:-	
	(a) Within the same Department.	Secretary.
	(b) Within the Secretariat from one Department to another.	Chief Secretary/Secretary Establishment.
6.	Officials upto the rank of Superintendent:-	
	(a) Within the same Department.	Secretary.
	(b) To and from an Attached Department.	Secretary in consultation with Head of Attached Department concerned.
	(c) Within the Secretariat from one Department to another.	Secretary Establishment.

ATTESTED

"D"

-23-

To,

The Secretary to Govt: of Khyber Pakhtunkhwa,
Health Department Peshawar.

Subject: ***REQEUST FOR IMPLEMENTATION OF ORDERS/ DIRCETIONS CONTAINED IN THE JUDGMENT, PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN SERVICE APPEAL No.1700/2022, REGARDING THE MODIFICATION OF IMPUGNED NOTIFICATION ISSUED VIDE DATED 22-08-2022, TO THE EXTENT OF TERM "COMPETENT AUTHORITY".***

Respected Sir,

In pursuance to the judgment announced by Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar vide dated 13/07/2023, on the subject note above.

Subsequent to above, the undersigned has the honor to hereby submit that the Service Tribunal Khyber Pakhtunkhwa has ordered in concluding Para of the judgment passed vide dated 13-07-2023, regarding the modification of impugned Notification issued vide dated 22/08/2023, to the extent of Term Competent Authority within stipulated period of fifteen days, in compliance of the judgment rendered in ***"2022 SCMR 439".***

According to Khyber Pakhtunkhwa Rules of Business, 1985, the Rule ***"17 (1)"*** *speaks about the Posting of civil servants while appending the Schedule –**III**, which shows their grade wise ranks at S.No.3 in Column 1 & the authorities who are competent to transfer them in Column 2, which is relevant to the undersigned being an employee of BS-19.*

Therefore it is humbly requested to kindly execute the subject judgment of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar and to modify the aforementioned impugned Notification in respect of the undersigned (S.No. 2) to the extent of term Competent Authority by disclosing his name & designation, while complying with the judgment of the Apex Court, according to above referred Rules of Business, 1985 and oblige please.

(Relevant Copies Enclosed).

(MUHAMMAD TAYYAB ABBAS)
Chief Drug Inspector (BS-19),
O/O the Services Hospital Peshawar.

Copy to:-

1) *Registrar Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar. For information & necessary action please.*

ATTESTED

(MUHAMMAD TAYYAB ABBAS)
Chief Drug Inspector (BS-19),
O/O the Services Hospital Peshawar
Dated: 04/08/2023.

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution No ____/2023

M. Tayyab Abbasi (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt (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

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

&

MAHMOOD JAN
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)