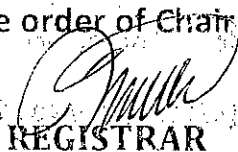


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 261/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.03.2024	<p>The implementation petition of Mr. Muhammad Khyam submitted today by Zartaj Anwar Advocate. It is fixed for implementation report before Single Bench at Peshawar on Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the Petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In the matter of  
Appeal No.53/2022  
Decided on 18.12.2023

*E.P. No. 261/2024*

Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type  
D Hospital Katlang District Mardan .

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health  
Civil Secretariat Peshawar & others.

(Respondents)

**INDEX**

<i>S. NO</i>	<i>Description of documents</i>	<i>Annexure</i>	<i>Page No</i>
1	Memo of Appeal along with affidavit		1- 3
2	Copy of the appeal and order and judgment dated 18.12.2023	A & B	4- 12
3	Copy of the application	C	13
4			
5	Vakalatnama		14

Appellant

Through

  
**ZARTAJ ANWAR**

Advocate Supreme  
Court of Pakistan  
Office FR , 3 Forth  
Floor Bilour Plaza  
Peshawar Cantt.  
Cell: 0331-9399185

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In the matter of  
Appeal No.53/2022  
Decided on 18.12.2023

*E.P. No. 261/2024*

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11883

Dated 25.03.2024

Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type  
D Hospital Katlang District Mardan .

**(Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar.
2. Director General, Health Department, Warsak Road Peshawar.
3. District Health Officer Mardan.

**(Respondents)**

**Application for the implementation of the order and Judgment dated 18.12.2023 in the above noted service appeal of this Honourable Tribunal.**

Respectfully Submitted:

1. That the above service appeal was pending before this honourable Tribunal which was decided vide order and judgment dated 18.12.2023.
2. That vide order and judgment dated 18.12.2023 of this honorable Tribunal allowed the appeal on the following terms:  
*for what has been discussed we are unison to set aside impugned order and reinstate appellant for the purpose of de-novo inquiry with direction to respondents to provide opportunity of defense and cross examination to the appellant as per rules".*  
**(Copy of the appeal and order and judgment dated 18.12.2023 is attached as annexure A & B)**
3. That the judgment and order of this honourable tribunal was duly communicated to the respondent by the applicant by submitting the application for implementation of the judgment but they are reluctant

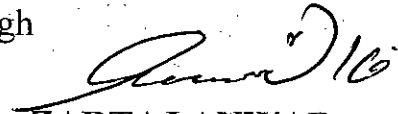
to implement the same. (*Copy of the application is attached as annexure C*)

4. That the respondents are legally bound to implement the order and judgment dated 18.12.2023 of this honorable Tribunal in its true letter and spirit without any further delay.

*It is, therefore, humbly prayed that on acceptance of this application the order and judgment dated 18.12.2023 of this honorable tribunal be implemented in its true letter and spirit.*

12/12/23  
Appellant

Through



**ZARTAJ ANWAR**

Advocate Supreme Court  
Of Pakistan

&



**IMRAN KHAN**

Advocate High Court  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

In the matter of  
Appeal No.53/2022  
Decided on 18.12.2023

Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type  
D Hospital Katlang District Mardan .

**(Appellant)**

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Health  
Civil Secretariat Peshawar & others.

**(Respondents)**

**AFFIDAVIT**

I, , Muhammad Khayyam S/O Adam Khan (Dental  
Technician) at Type D Hospital Katlang District Mardan, do  
hereby solemnly affirm and declare on oath that the contents  
of the above noted application are true and correct to the best  
of my knowledge and belief and that nothing has been kept  
back or concealed from this Honourable Tribunal.



*Kucya*  
Deponent

ANNEX A



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. 53 /2021

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 22

Dated 07/01/2022

Muhammad Khayyam S/O Adam Khan (Dental Technician) at  
Type D Hospital Katlang District Mardan .

(Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar.
2. Director General, Health Department, Warsak Road Peshawar.
3. District Health Officer Mardan.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 08.08.2021 whereby the appellant has been awarded the major penalty of removal from service. and against which the departmental appeal dated 08.09.2021 was filed before the competent authority which is not yet responded even after the laps of statutory period of 90 days.

Prayer in Appeal: -

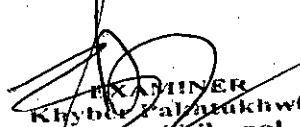
ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 08.08.2021, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS.

Respectfully Submitted:

The appellants humbly submits as under

1. That the appellant was initially appointed on the post of Dental Technician BPS-09 vide office order dated 02.02.2009. (Copy of the appointment order is attached as annexure A).

**ATTESTED**

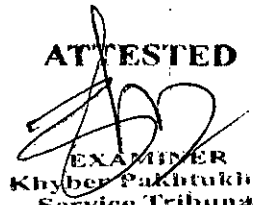
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Filed by - JAG  
Registrar  
07/01/2022

5

2. That since his appointment the appellant has performed his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance.
3. That while serving in the said capacity the appellant was transferred to Type - D Hospital Katlang district Mardan, vide office order dated 21.05.2012. *(Copy of the transferred order dated 21.05.2012 is attached as annexure B).*
4. That the appellant submitted his arrival report in the Type-D Hospital Katlang District Mardan and started his duties with great zeal and devotion and served the hospital for almost 8 years. *(Copy of the Arrival report is attached as annexure C).*
5. That while serving in the said capacity after 10 years of his service astonishingly the appellant has received a charge sheet dated 18.12.2020 containing false and baseless allegation of fake appointment order, which was duly replied by the appellant by denying all the false and baseless allegation levelled against the appellant. *(Copy of the charge sheet and reply is attached as annexure D & E).*
6. That no proper/regular inquiry was conducted, which mandatory procedure before awarding the major penalty, the appellant was served with a show cause notice dated 23.06.2021 by containing false and baseless allegations, *(Copy of the show cause is attached as annexure F).*
7. That respondents astonishingly awarded the major penalty of Removal From Service to the appellant vide impugned office order dated 06.08.2021. *(Copy of the impugned order dated 06.08.2021 is attached as annexure G).*
8. That being aggrieved from the acts and omission of the respondents the appellant filed his departmental appeal vide dated 08.09.2021, which is not yet respondent by the respondents even after lapse of the statutory period of 90 days. *(Copy of the departmental appeal is attached as annexure H).*
9. That the appellant filed this service appeal on the following grounds amongst the others:

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**GROUND OF WRIT PETITION:**

- A. That the petitioner has not been treated in accordance with law and his rights secured and guaranteed under the law has been violated.
- B. That the appellant was appointed in the year of 2009 and since his appointment the appellant had performed his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint what so ever regarding his performance till date.
- C. That while serving in the said capacity the appellant was transferred to Type – D Hospital Katlang district Mardan, vide office order dated 21.05.2012 the appellant submitted his arrival report in the Type-D Hospital Katlang District Mardan and started his duties with great zeal and devotion.
- D. That the appellant served the department for more than 10 years but despite of this the respondents awarded the major penalty of removal from service on the basis of fake appointment order, which is illegal, unlawful and without lawful authority.
- E. That at the time of appointment the respondent department verified his documents and after gone all the procedure, the appointment order was issued, after 10 years of his service the respondents alleged the false and baseless allegation of fake appointment order, is only based on malafide intention.
- F. That no proper/regular inquiry was conducted, which is mandatory procedure before awarding the major penalty, the appellant was served with a show cause notice dated 23.06.2021 by containing false and baseless allegations without conducting the inquiry.
- G. That the appellant has been denied of his livelihood, which amounts to violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.
- H. That no proper procedure has been followed by the respondents by awarding the major Penalty of Removal from Service.

Certified to be true **ATTESTED**

EXAMINER  
 Khyber Pakhtunkhwa EXAMINER  
 Service Tribunal Khyber Pakhtunkhwa  
 Peshawar Service Tribunal  
 Peshawar



- I. That valuable rights has been occurred in shape of appointment and principle of locus poenitentiae has also occurred in favour of the appellant as the order has been issued by the competent authority there is no such illegality or irregularity on the part of the appellant.
- J. That the superior courts have a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.
- K. That the appellant has never committed any act or omission which could be termed as misconduct.
- L. That the Appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 08.08.2021, may please be set aside and the appellant may kindly be reinstated into service with all back and consequential benefits.

Appellant

Through

*Zartaj Anwar*  
ZARTAJ ANWAR  
Advocate, Peshawar

& *Imran Khan*

IMRAN KHAN  
Advocate, Peshawar

**AFFIDAVIT**

I, Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type D Hospital Katlang District Mardan do hereby solemnly affirm and declare that the contents of the above Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Certified to be true copy *Khayyam*

*Khayyam*  
M. KHAYYAM  
Khayyam Khayyam  
Service Tribunal  
Peshawar

Date of Presentation of Application 21-3-24

Number of Words 47

Copying Fee 20/-

Urgent       

Total 20/-

Name of       

Date of Completion 22-3-24

Date of Delivery of 22-3-24

8 Annex B

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 53/2022



BEFORE: MRS. RASHIDA BANO .... MEMBER (J)  
MISS FAREEHA PAUL .... MEMBER (E)

Muhammad Khayyam S/O Adam Khan (Dental Technician) at Type D  
Hospital Katlang District Mardan.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat, Peshawar.
2. Director General, Health Department, Warsak Road, Peshawar.
3. District Health Officer, Mardan.

... (Respondents)

Mr. Zartaj Anwar  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

-----  
Date of Institution.....07.01.2022  
Date of Hearing.....18.12.2023  
Date of Decision.....18.12.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal the order dated 08.08.2021 may please be set aside and the appellant may kindly be reinstated into service with all back benefits.”**

2. Brief facts of the instant case are that appellant was appointed as Dental Technician (BPS-09) vide order dated 02.02.2009. That while serving in the said

capacity, he was transferred to Type-D Hospital Katlang District Mardan vide

ATTESTED

MEMBER (J)  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

order dated 21.05.2021. That after serving for ten years, he received charge sheet dated 18.12.2020 containing the allegations that he had been appointed through fake appointment order. That the same was replied by the appellant. That a show cause notice was also served upon the appellant and lastly, the impugned order of removal from service dated 06.08.2021 was issued. Feeling aggrieved, he filed departmental appeal on 08.09.2021, which was not responded, hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that he served the department for more than ten years with zeal and zest but despite this the respondents awarded the major penalty of removal from service on the basis of fake appointment order, which is illegal, unlawful and without lawful authority. He further argued that no regular inquiry was conducted which is mandatory before awarding the major penalty.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that a complaint was received from Anti Corruption Mardan dated 19.08.2019 regarding the fake appointment order and fake transfer for verification in which it is clearly mentioned that appointment order was fake as no dispatch number was found and fake signatures of the then agency surgeon has been made. Regular inquiry was conducted in accordance with rules through the Dy. DHO Mardan and District Coordinator LHW's Program Mardan.

6. Perusal of record reveals that appellant was appointed as Dental Technician vide order dated 02/02/2009 in the office of Agency Surgeon South Waziristan. He performed his duties till 21/05/2012 when appellant was transferred to Mardan district to Type-D Hospital Katlang, vide order dated 21/05/2012.

Appellant submitted his arrival at Mardan and since then was performing his

**ATTESTED**  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

duties till 06/08/2021 when he was dismissed from service on allegation of fake appointment order after long 11 years of his appointment.

7. Perusal of record further reveals that appellant was charge sheeted on 18/12/2020 with the allegation "Fake appointment order reference order No.145-47/IV/02-02-2009 by District Health Officer Mardan". Appellant submitted reply and denied allegation and categorically mentioned that his appointment order is genuine. Respondent alleged that regular inquiry was conducted by Dr. Shakir Ullah, Deputy District Health Officer, Mardan along with Dr. Fahad Iqbal, District Coordinator LHW Program. Inquiry was initiated upon source report of ACE Anti-Corruption Mardan letter dated 19/08/2019 wherein DHO, Mardan was asked to provide information that who was DHO, Mardan and Account Officer, Mardan on 21.04.2012 sent in connection with open inquiry No.21/2017. Inquiry was initiated by ACE Anti-Corruption because there was complaint that appellant on the basis of bogus and fake appointment order got himself transferred to Mardan. There was no complainant in the case in ACE Anti-corruption Mardan case and record is silent that who provided the information to ACE Anti-Corruption, Mardan about appellant. After receipt of letter dated 19/08/2019, proper/regular inquiry was to be initiated against the appellant but respondent conducted fact finding inquiry. Perusal of inquiry report of Dr. Shakir Ullah and Dr. Fahad Iqbal reveals that they conducted inquiry on just one day i.e 02/07/2020; no chance of hearing, self-defense or cross examination was provided to the appellant and it is not proved on record that infact appellant was personally served with letter dated 11/03/2020 for appearing before inquiry committee.

8. Agency Surgeon South Waziristan termed appellant's order fake as dispatch number of the appointment order was not found on it. Moreover the then agency Surgeon to whom picture of appointment order and service book was sent

TESTED  
 KHAN  
 KHAN  
 Service Tribunal  
 Peshawar

through Whatsapp denied from his signature. This is not the proper course to have been adopted as service of a civil servant is at task and appellant on the basis of that report was dismissed from service without recording statement of the then Agency Surgeon South Waziristan and providing chance of cross examination to the appellant upon him, which is an essential element of fair trial and inquiry.

9. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice require that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant who was proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

10. Before passing impugned order, respondent must have recorded statement of all concerned and provided opportunity to the appellant of cross-examination upon them but no such step was taken by the inquiry committee which is against the law and rules on the subject. Record is silent that what happened with ACE which became reason and basis for issuance of impugned order. Record is also silent whether respondent provided requisite information to ACE or not. It is


ATTESTED  
 Khairul Azhar  
 Service Tribunal  
 Peshawar

12

established on record that appellant was condemned unheard which is un-justice.


11. For what has been discussed, we are unison to set aside impugned order and reinstate appellant for the purpose of de-novo inquiry with direction to respondents to provide opportunity of defence and cross examination to the appellant as per rules. Costs shall follow the event. Consign.

12. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of December, 2023.

  
**(FAREEHA PAUL)**  
Member (E)

  
**(RASHIDA BANO)**  
Member (J)

\*Kaleemullah

  
Certified to be true copy  
**KHWAJA AMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 21-3-24  
Number of Words 57  
Copying Fee 25/-  
Urgent \_\_\_\_\_  
Total 25/-  
Name of Copyist \_\_\_\_\_  
Date of Completion 22-3-24  
Date of Delivery of Copy 22-3-24

To: Most Respected,  
District Health Officer Mardan.

23

Subject:

APPLICATION FOR RE-INSTATEMENT OF THE  
APPLICANT, IN THE LIGHT OF THE ORDER/  
JUDGMENT PASSED BY WORTHY KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR  
DATED 18.12.2023.

Respected Sir,

With profound veneration it is hereby submitting as below:

1. Applicant filed service Appeal before learned Court of Khyber Pakhtunkhwa Service Tribunal Peshawar, bearing appeal No. 53/2022, which appeal of the applicant/appellant please to allow by learned Service Khyber Pakhtunkhwa, Service Tribunal Peshawar Vide order/judgment dated 18.12.2023. (Copy of the order/judgment of Khyber Pakhtunkhwa, Service Tribunal Peshawar is appended herewith).
2. That since re-instatement of the applicant is please to order by learned Khyber Pakhtunkhwa, Service Tribunal Peshawar on his duty/job being Dental Technician (BPS-12) and also further order to faced de-novo inquiry, with further opportunity of defence and cross examination, which further above ordered proceeding must be faced as joint by the applicant.

It is therefore most humbly requested that in compliance of the order/judgment of learned Khyber Pakhtunkhwa, Service Tribunal Dated 18.12.2023, the applicant may be re-instatement on the service.

ATTESTED

23-02-2024

MUHAMMAD KHAYYAM  
Sto Adam Khan  
Health Department Dental Technician  
(BPS-12)  
R/o Ibrahim Khan Kalay Mardan  
Cell: 0333-9890928

Dated 23.02.2024



**POWER OF ATTORNEY**

In the Court of Khyber Pakhtunkhwa Service Tribunal Peshawar  
Muhammood Rhyam

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Govt of KPK and others

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/W, the undersigned, do hereby nominate and appoint


**ZARAJ ANWAR & IMRAN KHAN ADVOCATES**, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.


**AND** to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

**AND** I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

**PROVIDED** always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

**IN WITNESS** whereof I/we have hereto signed at Khany  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

  
**IMRAN KHAN**  
Advocate High Court  
Mob: 0345-9090648

  
**ZARAJ ANWAR**  
Advocate Supreme Court Of Pakistan  
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt  
Mobile-0331-9399185 BC-10-9851  
CNIC: 17301-1610454-5