


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 355/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.05.2024	<p>The implementation petition of Mr. Muhammad Jamil submitted today Mr. Hidayatullah Afridi Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on _____. Original file be requisitioned. AAG has noted the next date. Counsel for the petitioner has been informed telephonically.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE LEARNED COURT OF SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.948/2014 EP. No # 3557/2024

Mr. Muhammad Jamil.....**PETITIONER**

VERSUS

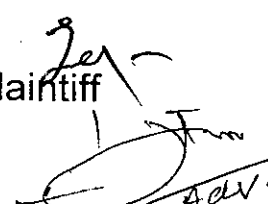
Government of Khyber Pakhtunkhwa & other.....**RESPONDENTS**

I N D E X

S.#	Description of Documents	Annex	Pages
1.	Execution Petition		1-3
2.	Affidavit		4
3.	Copy of order/judgment dated 18.10.2023	A	5-10
4.	Copy of Application		11-12
5.	Wakaltnama		13

Plaintiff

Through


Adv. H.C.
MUHAMMAD IDREES KHAN

&


HIDAYAT ULLAH AFRIDI
Advocates High Court

Dated: 11.05.2024

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BEFORE THE CHAIRMAN SERVICE TRIBUNAL, KPK,
PESHAWAR

In Service Appeal No. 948/2014

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12767

Dated 13.05.2024

Mr. Muhammad Jamil S/o Muhammad Ibrahim R/o Zafar Abad Colony, Near Gali Farooqi Masjid Dera Ismail Khan, Presently Naib ~~Basid~~ BPS-02 District Headquarter Teaching hospital, DI Khan.

..... **PLAINTIFF**

VERSUS

1. Government of KPK, Through Chief Secretary Peshawar
2. Secretary Health, KPK, Peshawar
3. Secretary Establishment Division KPK, Peshawar
4. Director General Health Service, KPK, Peshawar
5. Medical Superintendent/Hospital Director DHQ Teaching Hospital, DI Khan.
6. District Accounts Officer, Dera Ismail Khan.

..... **DEFENDANTS**

EXECUTION PETITION FOR IMPLEMENTATION
OF ORDER'S OF THIS HON'BLE COURT DATED
13.10.2023 IN SERVICE APPEAL NO. 948/2014,
DECIDED ON 18.10.2023.

RESPECTFULLY SHEWETH

1. That in service appeal cited above, while allowing Service Appeal, impugned order dated 17.12.2023 was graciously set

aside, and petitioner was reinstated in service, directing respondents to conduct proper inquiry before proceeding against the petitioner operating paragraph is hereby reproduced as under;

Therefore, or allowing this appeal impugned order is set aside with the direction to conduct proper inquiry before proceeding to take any departmental action against the appellant. The appellant is reinstated in service for the purpose of inquiry with the direction's the competent authority to conduct inquiry in matter strictly inn accordance with the relevant law/rules with in period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of inquiry. Costs shall follow the events consign.

2. That it has been clearly mentioned in the order of this Hon'ble Court that after reinstatement in service inquiry shall be conducted within 90 days, but beside laps of 9 months, neither the petitioner has been reinstated in service as VCI pathology, nor has any proper departmental inquiry has been conducted by the competent authority which has exposed the respondents for nor implementation of order of this Hon'ble Court, besides that the order was duly communicated to the competent authority on 15.11.2023 vide dairy receipt No. 36788. (COPY OF APPLICATION AND DAIRY RECEIPT ARE ANNEXED TO THE PETITIONER ALONG WITH ATTESTED COPY OF THE ORDER OF THIS HON'BLE COURT AS ANNEXURE I & II).

3. That, keeping in view present scenario, petitioner was left with no remedy but to approach this Hon'ble Court for reaction and implementation of orders of this court.
4. That this Hon'ble Court is now fully empowered to implement its order's is true letter and spirit after laps of time period awarded to the respondents/competent authority.


In view of the submissions made above it's humbly prayed that orders of this Hon'ble Court may graciously be implemented in letter and spirit.


Plaintiff

Through


MUN. H. C.
MUHAMMAD IDREES KHAN

&


HIDAYAT ULLAH AFRIDI
Advocates High Court

Dated: 11.05.2024

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BEFORE THE LEARNED COURT OF SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.948/2014

Mr. Muhammad Jamil.....**PETITIONER**

VERSUS

Government of Khyber Pakhtunkhwa & other.....**RESPONDENTS**

AFFIDAVIT

I, Mr. Muhammad Jamil S/o Muhammad Ibrahim R/o Zafar Abad Colony, Near Gali Farooqi Masjid Dera Ismail Khan, Presently Naib Rasid BPS-02 District Headquarter Teaching hospital, DI Khan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

IDENTIFIED BY:

Hidayat Ullah Afridi
HIDAYAT ULLAH AFRIDI
Advocates High Court

[Signature]
DEPONENT
CNIC:12101-5151907-9

[Signature]
ATTESTED
KHALID MAHMUD ADVOCATE
Oath Commissioner
Court Peshawar
26-5-21

Service Appeal No.948/2014 titled "Muhammad Jameel -vs- Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others", declared on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

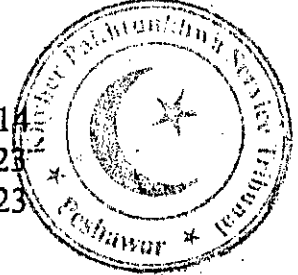
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR, AT CAMP COURT, D.I.KHAN

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.948/2014

Date of presentation of Appeal.....14.07.2014
Date of Hearing.....18.10.2023
Date of Decision.....18.10.2023



Mr. Muhammad Jameel S/O Muhammad Ibrahim.
R/O Zafarabad Colony near Gali Farooqiya Masjid, Dera Ismail Khan.
Presently Naib Qasid at D.H.Q.T Hospital D.I.Khan
.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
 2. Secretary Health Khyber Pakhtunkhwa, Peshawar.
 3. Secretary Establishment and Administration Department, Khyber Pakhtunkhwa, Peshawar.
 4. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
 5. Medical Superintendent D.H.Q Teaching Hospital Dera Ismail Khan.
 6. District Accounts Officer Dera Ismail Khan.
-(Respondents)

Present:

Mr. Muhammad Idrees Khan, AdvocateFor the appellant
Mr. Farhaj Sikandar, District AttorneyFor respondents

ATTESTED
M. Asif Khan

9/05/24 Adv. H-C

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF MEDICAL SUPERINTENDENT D.H.Q TEACHING HOSPITAL D.I.KHAN NO. 6889 DATED 17.12.2013 VIDE WHICH ORDER OF APPOINTMENT THROUGH PROMOTION DATED 08.07.2013 THROUGH RECOMMENDATION OF DEPARTMENTAL SELECTION COMMITTEE, BY MEDICAL SUPERINTENDENT (PREDECESSOR) D.H.Q.T HOSPITAL D.I.KHAN WAS WITHDRAWN AND THE APPELLANT WAS AWARDED WITH MAJOR PENALTY OF REDUCTION TO THE LOWER POST.

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Signature of the Chairman/Member
Khyber Pakhtunkhwa Service Tribunal
Peshawar

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN:- Brief facts of the case as alleged by the appellant in his appeal are that he was initially appointed as Naib Qasid (BPS-02) and was promoted/adjusted as JCT (Pathology) (BPS-09) vide order dated 03.01.2011, however vide order dated 09.12.2011, he was reverted to his original post i.e. Naib Qasid. The post of the appellant was re-advertised vide advertisement dated 14.05.2013 and on the recommendations of Departmental Selection Committee, he was appointed as JCT (Pathology) (BPS-09) vide order dated 06.07.2013, however his appointment order was withdrawn vide impugned order dated 17.12.2013 and he was reverted to his previous position. Feeling aggrieved of the impugned order dated 17.12.2013, the appellant filed departmental appeal, which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned and they were directed to submit comments. Respondents No. 1 to 5 contested the appeal by way of filing written reply/comments raising therein numerous legal and factual objections.

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

4. Learned counsel for appellant contended that on the recommendations of the Departmental Selection Committee, the appellant was appointed as JCT (Pathology) (BPS-09) vide order dated 06.07.2013 after observing all the legal and codal formalities

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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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but vide impugned order dated 17.12.2013 the appellant was wrongly and illegally reverted to his previous position. He next contended that the punishment can be awarded to a civil servant in case of any misconduct committed by the civil servant but in the instant case no misconduct has ever been committed by the appellant. He further argued that no ground for proceedings against the appellant had ever existed but despite that the appellant was awarded major punishment without conducting of any regular inquiry in the matter. He also argued that if any illegality was committed by the appointment Authority, then it was he to be made culpable and not the appellant as per settled law on the subject. In the last, he argued that the impugned order dated 17.12.2013 was passed on basis of mala-fide intention as well as without adopting legal procedure as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, the same is illegal and liable to be set-aside and the appellant may be reinstated in his original position as JCT (Pathology)(BPS-09) with all back benefits.

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D. I. KHAN
PESHAWAR

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5. As against that learned District Attorney argued that the appointment order of the appellant dated 06.07.2013 was issued without observing legal and codal formalities i.e. Advertisement, tests and interview. He next argued that the appointing Authority one day before his retirement issued the appointment order of the appellant in violation of the rules. He further argued that the Departmental Selection Committee was constituted and in this regard the members of the Departmental Selection Committee

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MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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denied their signatures on the minutes of meeting. He further contended that according to service rules, the post of JCT could only be filled through initial appointment and not by promotion. He also argued that certificate of JCT (Pathology) submitted by the appellant for his appointment against the post of JCT (Pathology) was not equal one issued by Government Institution or Private Institution affiliated with Medical Faculty, therefore, the appellant was not eligible for appointment against the said post. In the last, he argued that all the legal and codal formalities were fulfilled before passing the impugned order, therefore, the appeal in hand is liable to be dismissed.

6. A perusal of the record would show that initially the appellant was appointed as Naib Qasid (BPS-02). In the year 2013, a post of JCT fell vacant, which was advertised in the newspaper. The appellant also applied for the said post and was later on, vide order dated 06.07.2013, on the recommendations of Departmental Selection Committee, was appointed as JCT (Pathology) (BPS-09). After passage of some time, the appellant was issued show-cause notice on 20.08.2013, which is silent about the detail of irregularities/illegality committed by the Authority. It is only mentioned in the show-cause notice that the outgoing Medical Superintendent DHQ Teaching Hospital D.I.Khan, just before his departure, issued an order bearing No. 4417-20/PF dated 06.07.2023, appointing the appellant as JCT Pathology (BPS-9) without adopting the procedure for recruitment in accordance with the provisions of law & rules. Moreover, it has not been mentioned

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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in the show-cause notice that the appointing Authority was not competent or that the appellant lacked qualification or no advertisement was made as well as Departmental Selection Committee was constituted or the signatures of the members of Departmental Selection Committee were fake and bogus. The purpose of show-cause notice is always to afford sufficient opportunity to a civil servant to defend him but when a show-cause notice is given in vague terms without details, then show-cause notice loses its utility and the concerned civil servant shall be presumed to be prejudiced by not defending himself properly. The arguments of learned District Attorney regarding fake and bogus signatures of the members of the Departmental Selection Committee are not supported by any material. No inquiry committee was constituted nor any other occasion was highlighted by the department before whom or on which the said members of the committee have had the occasion of denial of their signatures and the appellant was also not given any chance to confront the denial of the members of the committee through due process. The impugned order is thus not sustainable in the eye of law and is liable to be set-aside. Keeping in view the facts and circumstances of the case, conducting of a proper inquiry is necessary for just and right decision of the issue in question.

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7. Therefore, on allowing this appeal, the impugned order is set-aside with the direction to conduct proper inquiry before proceeding to take any departmental action against the appellant.

The appellant is reinstated in service for the purpose of inquiry with

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SERVICE TRIBUNAL
PESHAWAR

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Service Appeal No.948/2014 titled "Muhammad Jameel -vs- Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others", declared on 18.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

the directions to the competent Authority to conduct inquiry in the matter strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of inquiry. ✓ Costs shall follow the events. Consign.

8. Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 18th day of October, 2023.



KALIM ARSHAD KHAN
Chairman
Camp Court, D.I.Khan

Attested
Khan
New H.C.
8/5/24

Certified to be true copy

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



SALAH-UD-DIN
Member (Judicial)
Camp Court, D.I.Khan

Mutazem Shah

Date of Presentation of Application 23/10/23
Number of Words Page 6
Copying Fee 20/-
Urgent ✓
Total 20/-
Name of Copyist -
Date of Completion 01/11/23
Date of Delivery 01/11/23

To The Director General
Health Services,
Khyber Pakhtunkhwa,
PESHAWAR.

Subject: REINSTATEMENT IN SERVICE AS JCT
(PATHOLOGY NOW BPS-12)

Sir,

The petitioner respectfully submits as under:-

1. That the petitioner is working as Class-IV in DHIQ Teaching Hospital, D.I.Khan.
2. That in the year 2013, the post of JCT (Pathology) was advertised by the then Medical Superintendent, DHIQ Hospital, D.I.Khan. The petitioner being eligible applied for the same. Departmental Selection Committee (DSC) was constituted which conducted test/interview and the petitioner was recommended for the post of JCT (Pathology).
3. That consequent upon the recommendations of DSC, the petitioner was promoted/adjusted as JCT (Pathology) vide order dated 06.7.2013. However, the said order was withdrawn on 17.12.2013 without any justification and the petitioner was reverted to his previous position.
4. That withdrawal order dated 17.12.2013 was challenged by the petitioner before Khyber Pakhtunkhwa Service Tribunal through Service Appeal No.948/2014.
5. That vide judgment dated 18.10.2023, the Service Tribunal was pleased to accept the appeal of the petitioner.

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set aside the impugned order dated 17.12.2013 (withdrawal order) and reinstate the petitioner into service. However, the issue of back benefits was subjected to the outcome of inquiry. Copy of the judgment dated 18.10.2023 is enclosed for your kind perusal.

It is, therefore, requested that in the light of Judgment of the Service Tribunal dated 18.10.2023, the petitioner may please be reinstated into service as JCT (Pathology now BPS-12) and office order in this respect may please be issued.


ATTESTED

Muhammad Jamil,
Class-IV,
DHIQ Teaching Hospital,
D.I.Khan

Dt: 15.11.2023.

