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Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 755/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.07.2024	<p>The implementation petition of Mr. Arshad Aziz submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 23.07.2024. 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</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP NO. _____/2024

Aashid Aziz

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED *EP* AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned *EP* is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

EP It is therefore prayed that on acceptance of this application the _____ may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 19/7/24

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 755 /2024
In
Appeal No. 127/2023

MR. ARSHID AZIZ, VS HEALTH DEPTT:

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Petitioner

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 755 /2024
In
Appeal No. **127/2023**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14380

Dated 19-07-2024

Mr. Arshid Aziz, Clinical Technician (Multipurpose) EPI (BPS-12),
O/O the District Health Officer, District Battagram.

..... Petitioner

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
- 2- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, Battagram.

..... **RESPONDENTS**

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 24/01/2024 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 127/2023 before this august Service Tribunal against the impugned orders dated 23/08/2021 & 27/08/2021, whereby the appointment order dated 17/08/2021 has been cancelled.
- 2- That the appeal of the petitioner was finally heard on dated 24/01/2024 and as such the ibid appeal was allowed with the following terms by this august Service Tribunal:

"7. In the circumstances, it would be appropriate to provide opportunity to the appellants to defend themselves as they were appointee of the process in which irregularities were allegedly committed. Hence, impugned orders are set aside with direction to the respondents to associate appellants with the inquiry proceeding by providing opportunity of defense and hearing to them. Appellants who assumed charge of their respective posts are hereby reinstated into service for the purpose of inquiry. Respondents are further directed to conduct and conclude inquiry with sixty days after receipt of copy of this order. Costs shall

follow the event. Consign." Copy of the consolidated judgment dated 24/01/2024 is attached as annexure.....**A**

- 3- That after obtaining copy of the judgment dated 24/01/2024 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....**B**
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 24/01/2024 passed in Appeal No. 127/2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.


Petitioner
Arshid Aziz

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Mr. Arshid Aziz, Clinical Technician (Multipurpose) EPI (BPS-12), (The appellant) do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




DEPONENT

"A" -3-

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

APPEAL NO. 127 /2023

Mr. Arshid Aziz, Clinical Technician (Multipurpose) EPI (BPS-12),
O/O the District Health Officer, District Battagram.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
- 2- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, Battagram.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDERS DATED 23.08.2021 & 27.08.2021 WHEREBY THE
APPOINTMENT ORDER DATED 17.08.2021 HAS BEEN
CANCELLED AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:

That on acceptance of this appeal the impugned orders dated 23.08.2021 and 27.08.2021 may kindly be set aside and the respondents may kindly be directed to restore the appointment order dated 17.08.2021 of the appellant with all back benefits including seniority. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant is law abiding and peaceful citizen of Pakistan and permanent/bonafide resident of District Battagram.
- 2- That respondent department advertised different posts of para medical staff including JCT(RADIOLOGY), JCTC(SURGICAL), JCT(PULMONOLOGY), PHCT(EPI) and EPI Vaccinator in Daily News Paper and the appellant being eligible, having requisite qualification and experience, applied for the post of Clinical Technician EPI (BPS-12). Copies of advertisement, Minutes of Selection Committee and Educational Documents are attached as Annexure **A & B.**

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD



Service Appeal No.126/2023

BEFORE: MRS. RASHIDA BANO MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Muhammad Islam, PHCT (Multipurpose) EPI (BPS-12), O/O the District Health Officer, District Battagram.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer, Battagram.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution..... 13.01.2023
Date of Hearing..... 24.01.2024
Date of Decision..... 24.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of this appeal the impugned orders dated

23.08.2021 and 27.08.2021 may kindly be set aside and the

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
09/2/24

respondents may kindly be directed to restore the appointment order dated 17.08.2021 of the appellant with all back benefits including seniority. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant."

2. Through this judgment we intend to dispose of instant service appeal as well as 8 connected service appeals which are:

1. Service Appeal No. 127/2023
2. Service Appeal No. 128/2023
3. Service Appeal No. 129/2023
4. Service Appeal No. 130/2023
5. Service Appeal No. 131/2023
6. Service Appeal No. 132/2023
7. Service Appeal No. 133/2023
8. Service Appeal No. 134/2023
9. Service Appeal No. 135/2023

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

3. Brief facts leading to filing of the instant appeals are that the appellants were appointed against the posts of PHCT vide order dated 17.08.2021. They were serving against their respective seats when in the meanwhile, vide office order dated 23.08.2021, their appointments were cancelled and an inquiry was ordered to be conducted in the matter. Resultantly, all the orders were cancelled vide impugned office order dated 27.08.2021. Feeling aggrieved from the said orders, they filed writ petition before the Peshawar High Court and the Peshawar High Court, vide order dated 15.09.2022 transmitted the writ petition to the respondents for

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Service Tribunal
Peshawar


09/07/23

treating the same as departmental appeal. But the respondents did not respond to the departmental appeal, hence, the instant service appeals.

4. Respondents were put on notice who submitted written reply/comments on appeal. We have heard learned counsel for the appellants and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellants argued that the impugned orders dated 23.08.2021 and 27.08.2021 were against law, facts and norms of natural justice. He submitted that the respondents had violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Further submitted that no inquiry had been conducted before passing of the impugned orders which was against law and rules. Lastly, he concluded that the action taken against the appellants was arbitrary and malafide, therefore, he requested for acceptance of the instant service appeals.

6. Conversely, learned Deputy District Attorney submitted that the respondents had treated appellants in accordance with law, rules and principles of natural justice. Further submitted that a fact finding inquiry had been conducted before passing of impugned orders; that the appellants were appointed without conducting of ETEA test. Further submitted that irregularities had been committed in the process of appointments of the appellants due to which their appointments were cancelled. Therefore, he requested for dismissal of the instant service appeals.

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Service Tribunal
Peshawar

7. Perusal of record reveals that appellants applied for their respective posts in consequence of publication published in newspaper for the posts of PHCT (EPT) advertised by respondent No.3. Appellants were considered by the DPC duly constituted and attended by the respondent No.3 as Chairman, Dr. Ahmad Faisal representative of DGHS and Mr. Mustafa Khan representative of DC Battagram as members held on 14.07.2021 upon recommendation of DSC, appellants were appointed vide order dated 17.08.2021 by respondent No.3.

8. Appellants assumed charge of their posts on 17.08.2021, 20.08.2021, and 21.08.2021 respectively and started performing official duties but appointment order was withdrawn by Director General Health vide order dated 23.08.2021 followed by order of respondent No.3 dated 27.08.2021 on the grounds of irregularities committed during appointing/recruitment process. Appellant approached worthy Peshawar High Court, Peshawar by filing writ petition bearing No.956/2021, which was considered as departmental appeals vide order dated 15.09.2022 by considering appellants as civil servants and send it to the respondent to decide it. The order of worthy Peshawar High Court is reproduced as under:

"Since the matter squarely falls within the jurisdiction of service tribunal, as such, jurisdiction of this court is bar under Article 212 of The Constitution of Islamic Republic of Pakistan."



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 EXAMINER
 Service Tribunal
 Peshawar

In view thereof copy of the memorandum of this writ petitions be transmitted to the respondents/department and be treated as departmental appeals for decision in accordance with law. On the completion of 90 days the petitioners would be at liberty to approach service tribunal subject to all just and legal exceptions. Respondents after receipt of order of Worthy Peshawar High Court alongwith writ petition did not decided the matter within 90 days.

9. It is also pertinent to mention here that appointment orders were cancelled as per representative of respondent upon report of respondent No.3 who reported that local MPA Mr. Zubair forcefully snatched entire record of appointments/recruitments of appellants at gun point from him as he wants to get appoint his blue eyed who was not appointed. When respondent No.3 reported incident of snatching of record legal proceeding must be initiated against the said MPA but instead of doing so, appointment orders were concealed without providing opportunity to direct effectees i.e. present appellants which is against the settled norms and rules upon subject and is not sustainable in the eyes of law.

10. Moreover it is mentioned in cancellation order dated 27.08.2021 local in-charge are directed not to accept the arrival of any of appointee/candidate but present appellants submit their arrival reports and also assumed charge of their posts. So, when appellants assumed charge then they became civil servants and they will have to be dealt with in

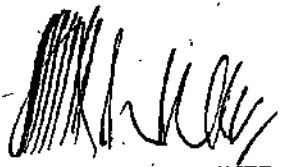
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Service Tribunal
Peshawar

accordance of rules and law, otherwise too Worthy Peshawar High Court consider appellants as civil servant.

11. In the circumstance it would be appropriate to provide opportunity to the appellants to defend themselves as they were appointees of the process in which irregularities were allegedly committed. Hence, impugned orders are set-aside with direction to the respondents to associate appellants with the inquiry proceeding by providing opportunity of defense and hearing to them. Appellants who assumed charge of their respective posts are hereby reinstated into service for the purpose of inquiry. Respondent are further directed to conduct and conclude inquiry within 60 days after receipt of copy of this order. Costs shall follow the event. Consign.

12. *Pronounced in camp court at Abbottabad and given our hands and seal of the Tribunal on this 24th day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad

ATTESTED

*M.Khan


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09/17/24
Date of Presentation of Application 09/17/24
Number of Words 67
Copying Fee 30/-
Urgent
Total 30/-
Name of Copyist
Date of Completion of Copy 09/17/24
Date of Delivery of Copy 09/17/24

"B"

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12 03 2024

- 10 -

The District Health Officer
District Battagram

Through Proper Channel

Subject:- REPRESENTATION FOR IMPLEMENTATION OF JUDGMENT DATED 24/01/2024 OF THE HONOURABLE SERVICES TRIBUNAL, KP PESHAWAR IN SERVICE APPEAL NO 126/2023 TO SERVICE APPEAL NO 135/2023.

Respected Sir

1. It is stated that the applicants was appointed as PHCT/JCT in the Health Department, Khyber Pakhtunkhwa, Peshawar vide order dated 17/08/2021.
2. That the applicants were serving against their respective seats in the meanwhile, vide office order dated 23/08/2021 appointments were cancelled and an inquiry was ordered to be conducted in the matter. Resultantly, all the orders were cancelled vide impugned order Office Order dated 27/08/2021.
3. That the applicants feeling aggrieved from the above mentioned impugned orders filed Writ Petition before the Peshawar High Court, Abbottabad Bench the Peshawar High Court, Abbottabad Bench vide order dated 15/09/2022 transmitted the Writ Petition to the department, treating the same as departmental appeal, but the department did not respond the departmental appeal.
4. That feeling aggrieved, the applicants filed Service Appeals No 126/2023 to 135/2023, which was accepted vide order dated 24/01/2024 and the impugned orders are set aside with the direction to the respondents to associate appellants with the inquiry proceeding by providing opportunity of defense and hearing to them. Respondent are further directed to conduct and conclude inquiry within 60 days after receipt of copy of order.

It is, therefore, most humbly requested that on acceptance of this representation, the judgment dated 24/01/2024 of Services Tribunal KP, Peshawar in Service Appeal No 126/2023 to 135/2023 may please be implemented in letter and spirit.

Dated:- 11/03/2024

Applicants

Muhammad Islam

Arshad Aziz

(1) Service Appeal No 126/2023

(2) Service Appeal No 127/2023.

Muhammad Fawad Khan

Saeed Khan

(3) Service Appeal No 128/2023.

(4) Service Appeal No 129/2023.

Muhammad Amir Khan

Syed Moeen Shah

(5) Service Appeal No 130/2023.

(6) Service Appeal No 131/2023.

Ijaz Ali shah

Inam Ullah

(7) Service Appeal No 132/2023.

(8) Service Appeal No 133/2023.

Ubaid ullah

Muhammad Usman

(9) Service Appeal No 134/2023.

(10) Service Appeal No 135/2023

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

E.P. _____ No. _____ /2024

Asghar Ariz

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Sout

(RESPONDENT)
(DEFENDANT)

I/We Asghar Ariz

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

Asghar Ariz
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHAMMAD

MAHMOOD JAM

&

ABID ALI SHAN
ADVOCATES

OFFICE:

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