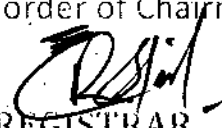


Form- A

FORM OF ORDER SHEET

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

Implementation Petition No. 734/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.07.2024	<p>The implementation petition of Mr. Muhammad Waqar received today by registered post through Mr. Hamayun Khan Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on - 25.07.2024. 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 HONOURABLE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA PESHAWAR**

E.P No. 734 /2024  
IN  
Appeal No. 2009/2022

Muhammad Waqar son of Muhammad Bashir Ex-JCT Surgical BPS-12,  
resident of Tamai, Tehsil & District Battagram.

...PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar  
and others.

...RESPONDENTS

**APPLICATION FOR IMPLEMENTATION**

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1.	Application	1 to 3	
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3.	Copy of judgment dated 24/01/2024	12 to 19	"B"
4.	Wakalatnama	20	

...PETITIONER

Through

Dated: 12/07 /2024

  
(HAMAYUN KHAN)  
&

  
(FAZLU LLAH KHAN)  
Advocates High Court, Abbottabad

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

E.P No. 734 /2024  
IN  
Appeal No. 2009/2022

Muhammad Waqar son of Muhammad Bashir Ex-JCT Surgical BPS-12,  
resident of Tamai, Tehsil & District Battagram.

**...PETITIONER**

**Khyber Pakhtunkhwa  
Service Tribunal**

**VERSUS**

Diary No. 14284

Dated 18-07-2024

1. Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar.
2. Director General Health Services Govt. of Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer Battagram.

**...RESPONDENTS**

**APPLICATION FOR IMPLEMENTATION OF  
JUDGMENT DATED 24/01/2024 PASSED BY THIS  
HONOURABLE TRIBUNAL IN APPEAL NO.  
2009/2022 TITLED "MUHAMMAD WAQAR V/S  
GOVT. OF KPK & OTHER"**

---

Respectfully Sheweth:-

1. That petitioner filed service appeal No. 2009/2022 against the impugned orders dated 23/08/2021 and 27/08/2021 passed by respondent No. 2 & 3. Copy of appeal is attached as Annexure "A".
2. That on 24/01/2024 after hearing of arguments this Honourable tribunal set-aside the impugned orders. Copy of judgment is attached as annexure "B".
3. That thereafter, petitioner submitted judgment passed by this Honourable court in the office of respondent No. 3 for implementation.
4. That after laps of more than 06 months respondents had not implemented judgment dated 24/01/2024 of this Honourable tribunal till date and refuse implement the same.
5. That respondent No. 3 instead of complying with the direction of this Honourable Tribunal, straightaway refused to comply with the direction of this Honourable Tribunal.

6. That other point would be raised at the time of arguments kind permission of this Honourable Tribunal.

It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed forthwith implement the judgment dated 24/01/2024 passed by this Honourable Tribunal in its true letter and spirit

...PETITIONER

Through

Dated: 12/07/2024

  
(HAMAYUN KHAN)

&  
  
(FAZLULLAH KHAN)  
Advocates High Court, Abbottabad

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

Appeal No. 2009 /2022

Muhammad Waqar son of Muhammad Bashir (Ex. JCT Surgical, BPS-12),  
resident of Tamai, Tehsil & District Battagram.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Health Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. District Health officer Battagram.

...RESPONDENTS

**APPEAL** UNDER ARTICLE 212 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN 1973 READ WITH SECTION 4 OF  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
ACT 1974, AGAINST THE IMPUGNED ORDER  
DATED 23.08.2021 PASSED BY THE RESPONDENT  
NO. 2 AND ORDER DATED 27.08.2021 PASSED BY  
RESPONDENT NO. 3, WHEREBY, RESPONDENTS  
NO. 2 AND 3 CANCELLED APPOINTMENT ORDER  
OF THE APPELLANT, WHICH IS ILLEGAL,  
UNLAWFUL, AGAINST THE LAW, FACTS AND

NATURAL JUSTICE AND LIABLE TO BE SET ASIDE.

---

**PRAYER:** ON ACCEPTANCE OF INSTANT APPEAL IMPUGNED ORDER DATED 23.08.2021 PASSED BY RESPONDENT NO. 2 AND SIMILARLY ORDER DATED 27.08.2021 PASSED BY RESPONDENT NO. 3 MAY KINDLY BE DECLARED AS NULL AND VOID, ILLEGAL, UNLAWFUL, AGAINST THE LAW, VOID, ABI-INITIO, HENCE LIABLE TO BE SET-ASIDE AND APPELLANT BE REINSTATED IN SERVICE ALONGWITH ALL BACK BENEFITS. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

---

Respectfully Sheweth;-

Appellant beg to solicit through instant appeal on the following legal and factual back grounds:-

1. That on 01.06.2021, respondent No. 3 advertised different posts including JCTC (Surgical BR3 (2)). Copy of advertisement is annexed as Annexure "A".

2. That consequent upon the advertisement, appellant submitted documents for the post of Surgical Technician BPS-12. Copy of documents is annexed as Annexure "B".
3. That thereafter, respondents conducted test/ interview and after completion of process on the recommendation of Departmental Selection Committee on 30.07.2021, respondent No. 3 issued appointment order of the appellant. Copy of appointment order of appellant is annexed as Annexure "C".
4. That on 31.07.2021, appellant submitted arrival report at Type-D THQ Hospital Banna Allai and joined duty. Copy of arrival report is annexed as Annexure "D".
5. That on 23.08.2021, respondent No. 2 issued letter to the respondent No. 3, whereby, respondent No. 2 cancelled appointment order of the appellant. Copy of impugned letter dated 23.08.2021 is annexed as Annexure "E".



6. That similarly on 27.08.2021, respondent No. 3 cancelled appointment order of the appellant in the light of letter dated 23.08.2021 issued by respondent No. 2. Copy of impugned letter dated 27.08.2021 is annexed as Annexure "F".
7. That thereafter, appellant alongwith others filed Constitutional Petition before the Honourable Peshawar High Court, Abbottabad Bench due to ambiguity about the term and condition of the appellant. Copy of Writ Petition No. 1965/2021 (Departmental Appeal) is annexed as Annexure "G".
8. That thereafter, respondent submitted comments before the Honourable Peshawar High Court, Abbottabad Bench and on 15.09.2022, after hearing of arguments, Honourable Peshawar High Court converted writ petition to departmental appeal and sent to the respondent No. 2 for disposal within 90 days. Copy of comments and order is annexed as Annexure "H" & "I".
9. That after completion of stipulated period (90 days), respondent No. 2 did not give any response

and similarly not passed any order on the departmental appeal, which was sent by the Honourable Peshawar High Court, Abbottabad Bench.

10. That, being aggrieved from the order dated 23.08.2021 and 27.08.2021 passed by respondents No. 2 and 3, the appellant is before this Honourable Tribunal with the appeal in hand inter-alia on the following amongst other grounds:-

**GROUND:-**

- a. That the impugned order/ act of respondents is illegal, unlawful, without lawful authority, arbitrary, perverse, against the principle of natural justice, hence ineffective upon the rights of the appellant and thus liable to be set-aside.
- b. That all proceedings were conducted against a well known principle of natural justice and guaranteed fundamental rights of appellant and therefore as the appellant has been condemned unheard, therefore, the

impugned order/ act is liable to be set-aside and appellant be reinstated with all back benefits.

c. That the impugned orders of respondents are sheer example of highhandedness and political motivation. Hence, liable to be set-aside.

d. That the impugned act of respondents is a worst example of discrimination and misuse of power/ authority.

e. That the act of department against the Article 4 & 25 of the Constitution of Islamic Republic of Pakistan as well as natural justice and intentionally till date not released back benefits.

f. That, impugned letter/ order are based on personal grudges and interests which is not sustainable.

g. That, impugned letter/ order are against the rules, no regular inquiry was conducted nor

the opportunity of defence and hearing was given to the appellant.

h. That, all the proceeding conducted by respondents No. 2 and 3 are clear violation of E&D Rules and issued impugned orders without any lawful justification, hence ineffective upon the rights of appellant and are liable to be set-aside.

i. That, the act of respondent is against guaranteed constitutional rights of the appellant, which are also against the norms and dictates of Justice.

j. That, impugned orders are issued in a hasty manner, which did not fulfill the codal requirement, hence having no legal value, is liable to be struck down.

k. That the valuable rights of the applicant are involved and all act of the finance department against the law, rules, policy and natural justice.


1. That the other grounds shall be argued at the time of arguments with the kind permission of this Honourable Tribunal.

It is, therefore humbly prayed that on acceptance of instant appeal impugned order dated 23.08.2021 passed by respondent No. 2 and similarly order dated 27.08.2021 passed by respondent No. 3 may kindly be declared as null and void, illegal, unlawful, against the law, void, abi-initio, hence liable to be set-aside and appellant be reinstated in service alongwith all back benefits. Any other relief which this Honourable Tribunal deems fit and proper in the circumstances of the case may also be granted to the appellant.

  
APPELLANT

Through

Dated: 21/12 /2022

  
(HAMAYUN KHAN)

&

  
(FAZLULLAH KHAN)

Advocates High Court, Abbottabad

**VERIFICATION/ AFFIDAVIT:-**

*Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.*

  
DEPONENT

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**CAMP COURT ABBOTTABAD**



Service Appeal No: 2009/2022

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

Mr. Muhammad Waqar S/o Muhammad Bashir (Ex. JCT Surgical, BPS-12),  
Resident of Tamai, Tehsil & 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. Hamayun  
Advocate \*

For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

For respondents

Date of Institution..... 28.12.2022  
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:

"On acceptance of instant appeal the impugned order dated 23.08.2021 passed by respondent No.2 and similarly order dated

ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

27.08.2021 passed by respondent No.3 may kindly be declared as null and void, illegal, unlawful, against the law, void ab-initio, hence liable to be set aside and the appellant be reinstated in service alongwith all back benefits. Any other relief which this honorable tribunal deems fit and proper in the circumstances of the case may also be granted to the appellant.”

2. Through this judgment we intend to dispose of instant service appeal as well as connected service appeal bearing No.2010/2022 titled “Javed Khan Vs Secretary Health & Others” as in both the appeals are common question of law and facts are involved.

3. Brief facts leading to filing of the instant appeals are that the appellants were appointed against the posts of JCT (Surgical) vide order dated 30.07.2021. 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 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 the appeal. We have heard learned counsel for the appellants and Mr. Asif Masood Ali Shah, Deputy District Attorney for the

ATTACHED

R. KAMRAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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.

7. Perusal of record reveals that appellants applied for their respective posts in consequence of publication published in newspaper for the posts of JCT Surgical 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

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



Khan representative of DC Battagram as members held on 14.07.2021 upon recommendation of DSC, appellants were appointed vide order dated 30.07.2021 by respondent No.3.

8. Appellants assumed charge of their posts on 31.07.2021 and 03.08.2021 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 filling writ petition bearing No.955/2021, 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."*

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

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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 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

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SEALING  
Cyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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 24<sup>th</sup> day of January, 2024.*

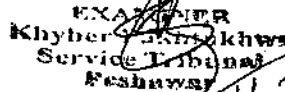


**(MUHAMMAD AKBAR KHAN)**  
Member (E)  
Camp Court Abbottabad



**(RASHIDA BANO)**  
Member (J)  
Camp Court Abbottabad

**ATTESTED**



11-7-24

\*M.Khan

Date of Presentation of Application 11-7-24

Number of Words 67

Copying Fee 30/-

Urgent 57/-

Total 87/-

Name of Copy \_\_\_\_\_

Date of Completion of Copy 11-7-24

Date of Delivery of Copy 11-7-24

**ORDER**

- 18 -

24.01.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney Dr. Adnan Shehzad, Litigation Officer for the respondents present.

2. Vide our detailed judgment of today placed on file, the impugned orders are set-aside and appellant is reinstated into service for the purpose of denovo inquiry with direction to the respondents to associate appellant with the inquiry proceeding by providing opportunity of defense and hearing to him. Respondent are further directed to conduct and conclude inquiry within sixty days after receipt of copy of this order. Costs shall follow the event. Consign.

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



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



(RASHIDA BANO)  
Member (J)  
Camp Court Abbottabad

19 -

To  
The District Health Officer  
District Battagram

Subject:- Through Proper Channel  
REPRESENTATION FOR IMPLEMENTATION OF JUDGMENT DATED  
24/01/2024 OF THE HONOURABLE SERVICES TRIBUNAL, KP PESHAWAR IN  
SERVICE APPEAL NO 2009/2022 & SERVICE APPEAL NO 2010/2022

Respected Sir

1. It is stated that the applicants was appointed as PHCT/JCT in the Health Department, Khyber Pakhtunkhwa, Peshawar vide order dated 30/07/2021
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 2009/2022 & 2010/2022, 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 2009/2022 & 2010/2022, may please be implemented in letter and spirit.

Applicants

Dated:- 11 /03/2024

MUhammad Waqar 

(1) Service Appeal No 2009/2022

Javed Khan   
(2) Service Appeal No 2010/2022

