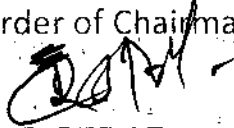


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 450/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.06.2024	<p>The implementation petition of Mr. Masoom Khan received today by registered post through Sheikh Iftikhar ul Haq Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on 19 .08.2024. Original file be requisitioned. AAG has noted the next date. Counsel for the petitioner has been informed telephonically.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Masoom Khan vs Govt of KP etc

S.#	Contents	Yes	No
1.	This appeal has been presented by: _____	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the 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/annexures are properly pagged?		
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10.	Whether annexures are legible?		
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?		
13.	Whether copy of appeal is delivered to A G/D A G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/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 attached?		
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?		
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 Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____	✓	
26.	Whether copies of comments reply/rejoinder submitted? on _____	✓	
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____	✓	

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

Name: Masoom Khan

Signature: Masoom Khan

Dated: 01.6.2024

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. 450 of 2024

In Service Appeal No. 2229/2021

Decided on 22/11/2023

Masoom Khan

Versus

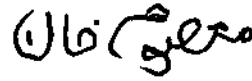
Govt. of KPK etc

INDEX

Sr. #	Particulars of Documents	Annexure	Page
1.	Grounds of implementation Petition along with affidavit	--	1-3
2.	Copies of the grounds of service appeal and judgment dated 22/11/2023	A & B	4-10
3.	Vakalat Nama	--	- 11 -

Date: 01/06/2024

Yours Humble Petitioner



Masoom Khan

Through Counsel


A.S.C.

Sheikh Iftikhar ul Haq
Advocate Supreme Court

1

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. 450 of 2024

In Service Appeal No. 2229/2021

Decided on 22/11/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13226

Dated 06.06.2024

Masoom Khan son of Sultan Sikandar caste Kundi r/o Ama
Khel Tehsil & District Tank retired Chowkidar RHC Amakhel
Health Department Tank

..... **Petitioner**

VERSUS

1. Government of KPK, Through Secretary Health Services
Khyber Pakhtunkhwa Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa
Peshawar.
3. District Health Officer Tank.
4. District Accounts Officer Finance Department Tank.

..... **Respondents**

**IMPLEMENTATION PETITION UNDER KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 READ WITH KPK SERVICE
TRIBUNAL SERVICE TRIBUNAL RULES 1974 AS AMENDED
FOR IMPLEMENTATION OF THE ORDER/JUDGMENT IN
SERVICE APPEAL NO. 2229/2021 DECIDED ON 22/11/2023
BY THIS HONOURABLE TRIBUNAL.**

Respectfully Sheweth:-

The Petitioner most respectfully submits as under:-

1. That appellant was retired from service on 12/12/2018 but his
retirement was given effect from 04/09/2017 and deduction
was made from his pension while increment was also denied,
for which the appellant filed departmental appeal which was
not responded within stipulated period.

2. That thereafter the appellant submitted service appeal against the deduction and for increment, which was accepted by this Honourable Tribunal vide order dated 22/11/2023 in service appeal No. 2229/2021. Copies of the grounds of service appeal and judgment dated 22/11/2023 are annexed as **Annexure-A & B.**
3. That thereafter the appellant submitted an application for implementation of the judgment of this Honourable Tribunal but the respondents are reluctant to obey the order of this honourable Tribunal in letter and spirit just on the basis of ulterior motives and under table settlement, hence, the instant petition.

GROUND

- A. That the acts and omissions of the respondents authorities to not obeyed/implement the order of this honourable tribunal in its true letter and spirit are clear cut violation of law, statutes and constitution.
- B. That lame excuses on behalf of respondents/authorities are not maintainable and respondents are required to implement the judgment of this honourable Tribunal in its true letter and spirit.
- C. That the Counsel for the Petitioner may kindly be allowed to raise further legal grounds during the course of arguments.

It is therefore, humbly requested that the respondents be directed to partially implement the judgment/order of this honourable tribunal dated 22/11/2023 in its true letter and spirit.

Date: 01/05/2024

Yours Humble Petitioner



Masoom Khan

Through, Counsel



Sheikh Iftikhar ul Haq
Advocate Supreme Court

3

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. _____ of 2024

In Service Appeal No. 2229/2021

Decided on 22/11/2023

Masoom Khan

Versus

Govt. of KPK etc

AFFIDAVIT

I, **Masoom Khan** son of Sultan Sikandar caste Kundi r/o Ama Khel Tehsil & District Tank retired Chowkidar RHC Amakhel Health Department Tank, do hereby solemnly affirm and declare on oath that contents of above Petition are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

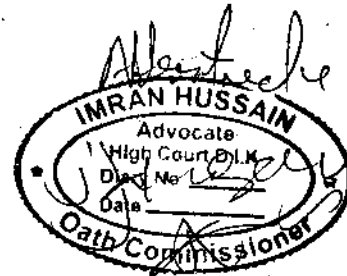
Dated: 01/06/2024

01/06/2024

DEPONENT

Identified by:

Sheikh Iftikhar ul Haq A.S.C
Sheikh Iftikhar ul Haq
Advocate Supreme Court



4.
Service Appeal No.2229/2021 titled "Masoom Khan versus Government of Khyber Pakhtunkhwa through Secretary Health Department Khyber Pakhtunkhwa others", decided on 21.11.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.



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

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN... MEMBER (Executive)

Anni "A"

Service Appeal No.2229/2021

Date of presentation of Appeal.....01.02.2021
Date of Hearing.....21.11.2023
Date of Decision.....22.11.2023

Masoom Khan, son of Sultan Sikandar caste Kundi resident of Village Amakhel, Tehsil & District Tank. Retired Chowkidar RHC Amakhel, Health Department District Tank.....(*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Tank.
4. District Accounts Officer Finance, Department Tank

.....(*Respondents*)

Present:

Sheikh Iftikhar Ul Haq, Advocate.....For the appellant
Mr. Habib Anwar, Additional Advocate GeneralFor respondents

PRAYER IN APPEAL:

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THE ILLEGAL ACTS OF DEDUCTION OF AMOUNT FROM THE PENSIONARY BENEFITS OF THE APPELLANT BY THE RESPONDENTS AND NOT TO RELEASE THE FULL PENSION AND ACCRUED ARREARS OF PENSIONARY BENEFITS AND INCREMENTS MAY KINDLY BE SET ASIDE AND DECLARED AS ILLEGAL, VOID AB INITIO BEING WITHOUT LAWFUL AUTHORITY AND THE RESPONDENTS BE RELEASED THE FULL PENSIONARY BENEFITS WITHOUT ANY DEDUCTION AND ALSO RELEASE THE REMAINING ARREARS INCLUDING INCREMENTS FOR WHICH THE APPELLANT IS ENTITLED AND ALSO AGAINST THE NON-ACTION OF THE APPELATE AUTHORITY ON THE DEPARTMENTAL APPEAL MEANING

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

THEREBY REJECTION QUA THE DEPARTMENTAL APPEAL WITHIN STIPULATED PERIOD

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case as detailed in the memo and grounds of appeal are that appellant was appointed as Chowkidar/Class-IV on 07.09.1981. That he had retired from service on 12.12.2018 but his retirement was given effect from 04.09.2017 and deduction was made from his pension while increment was also denied.

02. Feeling aggrieved, he filed departmental appeal which was not responded within statutory period of 90 days. Therefore, he filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

04. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

05. Learned counsel for the appellant argued that the impugned act i.e. deduction from pensionary benefits, non-releasing of pensionary benefits and arrears, including increments, were against law, facts and natural justice, hence, liable to be set aside. He submitted that the appellant had performed duties till 12.12.2018, therefore, he was entitled for salaries and other benefits till that date. Lastly, he concluded that the appellant served the department for 37 years, therefore, he was entitled for the whole pensionary benefits.

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

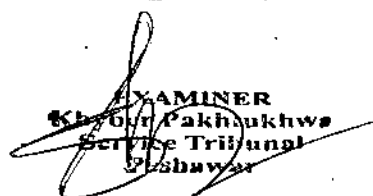
[Signature]

06. As against that learned Additional Advocate General submitted that the actual date of retirement of the appellant was 06.09.2017, calculated by the District Accounts Officer, Tank. Further submitted that 12.12.2018, was the date of issuance of the retirement order. Lastly, he concluded that in the Service Book at the time of appointment, the age of appellant was recorded as 24 years on 05.09.1981, while 36 years total qualifying service was at his credit, therefore, the actual date of retirement was 06.09.2017 and not 12.12.2018. He requested for dismissal of the instant service appeal.

07. Learned counsel for the appellant has relied on the judgment reported as 2017 PLC CS 331 titled "Abdul Qayyum Vs. Director General Anticorruption & others", wherein, reference was made to another judgment. The relevant portion of the said judgment, reported as 2009 PLC 1400 is reproduced below:

"Recovery of amount from pensionary benefit. Civil servant who was to retire on attaining the age of superannuation remained working even after superannuation for about eleven months without objection from the Authority, but Authority on finalization of his pension case, recovered the amount of salaries drawn by him during the said period of eleven months from pensionary benefits of Civil Servant. Validity civil servant having worked during the period of eleven months without any objection from the Authority, there was no justification for Authority to effect recovery of amount from the pensionary benefits of Civil Servant. Nothing was on file to demonstrate that Civil Servant had a hand in the affair and that he had approached the High Court with unclean hands disentitling him to discretionary and equitable relief provided under Article 199 of the Constitution. Jurisdiction of High Court to entertain a constitutional petition at the instance of Civil Servant, was not ousted in respect of all matters, but ouster was limited to only those cases which could be taken up by Service Tribunal. Recovery in question had been effected without issuing notice to the Civil Servant Non-issuance of notice had certainly prejudiced the interest of Civil Servant. Order recovering amount from pensionary benefits of Civil Servant, was declared to be illegal and without lawful authority and no legal effect by the High Court, in exercise of its




EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No.2229/2021 titled "Masoom Khan versus Government of Khyber Pakhtunkhwa through Secretary Health Department Khyber Pakhtunkhwa others", decided on 21.11.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, D.I.Khan.

Constitutional jurisdiction with direction to pay the recovered amount to Civil Servant."

08. The case of the appellant is quite similar to the facts of the above case. In the instant case, the appellant was not retired rather allowed to continue his service after his attaining the age of superannuation and no fault appears to be on the part of the appellant. The department ought to have retired the appellant on attaining the age of superannuation but because they had not retired and had allowed him to continue, therefore, the claim of the appellant that the payment made to him after his attaining the age of 60 years, could not be recovered from him, is genuine and quite justified, especially when performance of duty after the date of superannuation has not been denied. Therefore, while allowing this appeal, we direct the respondents to take up the matter with the Finance Department for regularization of the pay drawn by the appellant beyond the age of superannuation, by treating the period spent on duty. Consign.

09. Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 22nd day of November, 2023.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Date of Presentation of Application	02/11/23
Number of Vols	1-4
Copying Fee	200/-
Urgent	1/20
Total	200/-
Name of Copied	
Date of Completion	02/11/23
Date of Closing	02/11/23

Certified to be true copy

**Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

Mutazem Shah

8

Ann/ "B"

21st Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. Arguments heard. To come up for order, by tomorrow i.e.

22.11.2023 before D.B at Camp Court, D.I.Khan. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman
Camp Court, D.I.Khan

Muzam Shah

S.A #. 2229/2021

ORDER

22nd Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. Vide our detailed judgment of today placed on file, while allowing this appeal, we direct the respondents to take up the matter with the Finance Department for regularization of the pay drawn by the appellant beyond the age of superannuation, by treating the period spent on duty. Consign.

3. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 22nd day of November, 2023.*

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman
Camp Court, D.I.Khan

Muzam Shah

9

بخدمت جناب ڈسٹرکٹ اکاؤنٹس آفیسر فنانس ڈیپارٹمنٹ ٹانک

درخواست برائے عمل درآمد فرمائے جانے پر فیصلہ سروس اپیل نمبر 2229/2021 فیصلہ شدہ مورخہ

22/11/2023 اور جاری فرمائے جانے پر پیشی مراعات سائل اور کٹوتی کو برطابق حکم و فیصلہ سروس

ٹریبونل ختم کر کے بقا پٹیشن جاری فرمایا جائے۔

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ سائل محکمہ صحت ٹانک میں بطور چوکیدار اپنی خدمات سرانجام دے کر مورخہ 12/12/2018 کو ریٹائرڈ ہوا۔ لیکن سائل کو 04/09/2017 سے ریٹائرڈ سمجھا گیا اور سائل کی پٹیشن سے تنخواہوں کی کٹوتی کی گئی جس کے خلاف سائل نے اپیل دائر کی اور سائل کی اپیل منظور ہوئی۔ نقل حکم لف ہے۔

لہذا استدعا ہے کہ درخواست ہذا حسب عنوان و تشریح و صراحت منظور فرمائی جائے۔

مورخہ 11/05/2024

معصوم خان ولد سلطان سکندر قوم کنڈی سکند ماخیل ضلع ٹانک۔ ریٹائرڈ چوکیدار IRHC ماخیل محکمہ صحت ٹانک
معصوم خان

Attached to be true 11/5
م

10

No. 101

For Insurance Notices see reverse:
Stamps affixed, except in case of
units **RGL124503789**
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. 65/-

Received a registered*
addressed to _____

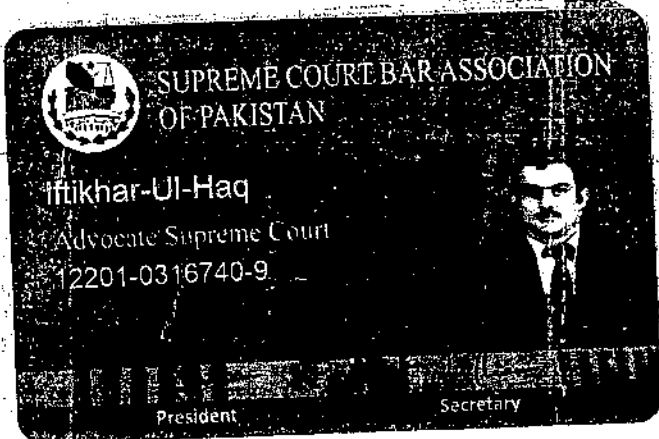
Date-Stamp _____

Initials of Receiving Officer _____
Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
Insured for Rs. (in figures) _____ (in words) _____

If insured.

Insurance fee Rs. _____ Ps. _____
Name and address of sender _____
Weight _____ Kilo _____ Grams _____
2000
Muzaf Ali Khan

50th



11

وکالت

کورٹ
فیس

جناب KPK سروس ٹریڈ یونٹ لمیٹڈ ڈیرہ اسماعیل خان

مخالف
مصہوم خالیم گوشت آف کھٹا ریڑھ

Implementation Petition

تفصیل دہی یا جرم

باعث تحریر آنکہ

Dr. Isham
مقدمہ پورچ بالا انوائس میں اپنی طرف سے اسٹاپ کردی و جرح کی برائے پیشی یا تفریق مقدمہ

محکمہ ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ذرا بڑی رو برو عدالت حاضر ہونا دونوں کا اور بروقت پکڑے جانے مقدمہ وکیل صاحب کو اطلاع دینے کے حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب کو اطلاع دینے کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ یا کچہری کے اوقات سے پہلے یا بیچے یا بروز تعطیل نہ آئے اور نہ ہوں گے اور مقدمہ صدر کچہری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات سے آگے یا بیچے پیش ہونے یا منظر کوئی تفریق پیش نہ ہونے کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ داخل کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کسی معاوضہ پر داخلہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو فرض دہی یا جواہر دہی یا درخواست اجراء اسمائے ذگری منظورانی اپنی گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر مائینی یا راضی نامہ و فیصلہ برطرف کرنے اقبال دہی کا بھی اختیار ہوگا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مقرر ہونے اور کچہری صدر جج دی مقدمہ مرکز نظر ثانی اپیل و گمرانی و برآمدگی مقدمہ یا منسوقی ذگری ایک طرف یا درخواست حکم امتناعی یا ترقی یا گرفتاری میں از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ہدایتی علیحدہ مختصمیر دہی کا اختیار ہوگا اور تمام ساختہ پرواضح صاحب موصوف مثل کردہ اور خود منظور، قبول ہوگا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی یا بصورت درخواست نظر ثانی اپیل گمرانی یا دیگر معاملہ و مقدمہ مذکورہ کسی دوسرے وکیل یا بیر مشرک کو تفویض نہ جائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں دہی اور ویسے اختیارات مائل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور عدالت مقدمہ میں ہو کہ ہر جانب التزام پڑے گا وہ صاحب موصوف کا حق ہوگا مگر صاحب موصوف کو پوری ٹیکس تاریخ پیشی سے پہلے ادا نہ کروں گا نہ صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پوری نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ منظور ہے

31 - 31 - 2024

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Attached

مصہوم خالیم

Accepted
Iftikhar-Ul-Haq
Secretary
S.C.A.