


FORM OF ORDERSHEET

Court of _____

Misc. application No. 1187/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/10/2024	<p>The Misc. application in appeal no. 969/2017 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Division Bench at Peshawar on 23.10.2024. Original file be requisitioned. Parcha Pesi given to the counsel for the applicant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM No:- 1187 /2024
IN
SERVICE APPEAL No. 969/2017

Dr Asad Ullah Khan

VS

GOVT & OTHERS

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Applicant

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

CM No:- 1187 /2024
IN
SERVICE APPEAL No. 969/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16733

Dated 15-10-24

Mr. Asad Ullah Khan, Assistant Director Homeopathic
(BPS-17) Director General Services Health, Khyber
Pakhtunkhwa, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Secretary to Government of Khyber Pakhtunkhwa *Health Dept*
Civil Secretariat, Peshawar.
- 2- The Director General Health Services, Khyber
Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department Khyber
Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

APPLICATION FOR CORRECTION / RECTIFICATION OF
TYPOGRAPHICAL MISTAKES IN THE JUDGMENT DATED
17/05/2024 PASSED BY THIS HONOURABLE TRIBUNAL.

Respectfully Sheweth:-

1. That the above noted service appeal was fixed before
this Honourable Tribunal 17/05/2024 and was decided
with certain directions mentioned herein.
2. That upon receipt of judgment dated 17/05/2024, it
transpired that the name of counsel for appellant as
"Muhammad Asif Yousafzai Advocate" have mistakenly
been attributed, which is infact a typographic mistake
and requires correction by replacing the as "Noor
Muhammad Khattak Advocate".

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3. That it worth mentioned here that the applicant counsel argued the service appeal in hand, hence required correction.

It is, therefore, humbly prayed that correction as indicated as counsel for appellant may graciously be made by replacing "Muhammad Asif Yousafzai Advocate" to "Noor Muhammad Khattak".

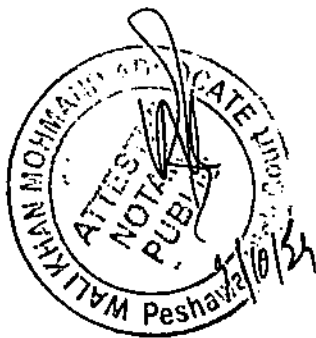
Dated:- 09/10/2024

Applicant/ Counsel for appellant

Noor Muhammad Khattak
Advocate Supreme Court

AFFIDAVIT

I, **Noor Muhammad Khattak** Advocate High Court, Peshawar (Counsel for appellant) do hereby solemnly affirm and declare that the contents of this accompanying **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



ADVOCATE

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

Service Appeal No. 969/2017

BEFORE: Mrs. Rashida Bano --- Member (J)
Miss Fareeha Paul --- Member (E)

**Dr. Asad Ullah Khan, Assistant Director Homoeopathic (BPS-17),
Director General Services Health, Khyber Pakhtunkhwa, Peshawar.
... (Appellant)**

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director, General Health Services, Khyber Pakhtunkhwa Peshawar
3. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
...(Respondents)

Muhammad Asif Yousafzai
Advocate --- For Appellant

Muhammad Jan
District Attorney --- For respondents.

Date of Institution.....18.08.2017
Date of Hearing..... 17.05.2024
Date of Decision.....17.05.2024

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 under;

“That on acceptance of this appeal the respondents may be directed to fix the pay of appellant in BPS-17 from the first date of appointment i.e 17.05.2007 with all back and consequential benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

2. Brief facts of the case are that the appellant was appointed as Assistant Director Homeopathic (BPS-17) on contract basis vide notification dated 17.05.2007 for six months or till the completion of project, which was extended vide notification dated 03.03.2008 till the completion of project. Later on Provincial Government vide notification No. PA Khyber Pakhtunkhwa /Bills/ 2014/10015 dated 26.03.2014 promulgated the Khyber Pakhtunkhwa Tibb and Homeopathic Employees (Regularization of Services) Act, 2014 and under the said Act the appellant service was regularized as Assistant Director Homeopathic BPS-17 from the date of first appointment vide notification dated 22.10.2014. After the regularization the salary of the appellant was started from the date of notification dated 22.10.2014, which was not fixed from the date of first appointment inspite fact that the appellant's service was regularized from the date of first appointment. Feeling aggrieved, the appellant filed departmental appeal on 20.04.2017, which was not decided within the statutory period, hence the present instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

4. Learned counsel for the appellant contended that not counting the project service served by the appellant in the respondent department is against the law, facts and norms of natural justice; that the appellant has not been treated in accordance with law, rules and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that it is clear from the regularization order dated 26.03.2014, the appellant is

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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entitled for pay fixation but instead of that the respondents are not willing; that under Article 38 (e) of the Constitution of Islamic Republic of Pakistan 1973, State is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan. Moreover, similar nature case titled "Mian Siraj Vs. Government of Khyber Pakhtunkhwa" has been decided by this Tribunal vide judgment dated 02.07.2010, therefore, under the principle of consistency reported in 2009 SCMR page 1 the appellant is also entitled for the grant of similar relief; that the action and inaction of the respondents is discriminatory and based on malafide.

5. On the other hand, learned District Attorney contended that appellant has been treated in accordance with law and Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973 is not applicable in the instant case; that appellant was not entitled for counting/including the project service as he did perform the duty under Tibb/Homeopathic Employment (Regularization Service) Act, 2014 and the appellant was regularized w.e.f. 22.10.2014;- that the case titled "Mian Siraj Vs. Government of Khyber Pakhtunkhwa has no nexuses with the instant appeal and there was no gap period and same pertains to Class-IV employees; that there is no discrimination and fraud with the Government Exchequer,

6. Perusal of record reveals that appellant was appointed as Assistant Director Homeopathic (BPS-17) in the respondent department vide order dated 17.05.2007 on contract basis for six months or till the completion of project, which was extended vide notification dated 03.03.2008 till the completion of the project. It is also admitted fact that regular posts of Homeo

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Doctors were created with effect from 01.07.2010. The Provincial Assembly passed Tibb and Homeopathic Employees (Regularization of Services) Act 2014 and consequently the appellant's services was regularized vide notification dated 22.10.2014 from the date of first appointment. Pay record of the Accountant General Office, Khyber Pakhtunkhwa reveals that the entry of the appellant into government service is shown as from 26.05.2007 but the benefit of seven years of service is not being given to him. Counsel for the appellant placed record of another similarly placed employee of the respondent department namely Mr. Abdur Rehman, Tabeeb who has been allowed the benefit of service with effect from his initial appointment. Both the employees stand regularized under the same law and same regularization order and serving in the same hospital. Moreover this Tribunal has remitted similarly placed Service Appeal 269/2016 title "Syed Nizam Ali Shah versus Government" to the respondent department for deciding departmental appeal of the appellant vide judgment dated 10.10.2018.

7. In view of foregoing discussion the instant appeal is remitted back to the respondent to decide the departmental appeal of the appellant through a speaking order in accordance with the law treating him at par with his other similarly placed employees within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

8. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 17th day of May, 2024.

(Fareeha Paul)
Member (E)

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Rashida Bano)
Member (J)

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