


Form- A  
FORM OF ORDER SHEET

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

Implementation Petition No. 1214/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.10.2024	<p>The implementation petition of Mr. Mubarak Khan submitted today by Mr. Zafar Iqbal Dawar Advocate. It is fixed for implementation report before Single Bench at Peshawar on 24.10.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.</p> <p>By order of the Chairman  REGISTRAR</p>

**BEFORE THE COURT OF SERVICES TRIBUNAL,**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Execution Petition No. 1214 /2024

IN

Service Appeal No. 888/2018

Dr. (R) Mubarak Khan ..... **Petitioner**

**VERSUS**

Secretary Health and another ..... **Respondents**

**I N D E X**

<b>S.No.</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
1.	Execution Petition along with affidavit	*	1-4
2.	Copy of Judgment dated 03/05/2024	A	5-11
3.	Wakalatnama / Application to Secretary Health.	*	12

Dated: 16/10/2024

Petitioner

Dr. (R) Mubarak Khan

Through

**Zafar Iqbal Dawar**

Advocate, High Court(s)

Peshawar

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**BEFORE THE COURT OF SERVICES TRIBUNAL,**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Execution Petition No. 1214 /2024  
IN  
Service Appeal No. 888/2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 16857

Dated 16-10-24

Dr. (R) Mubarak Khan S/o Haji Sardar Ali Khan R/o  
House No. 68, Street No. 4, Sector F-2, Phase-VI,  
Hayatabad, Peshawar ..... **Petitioner**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar
3. Director General, Health Peshawar
4. Accountant General, Peshawar.
5. District Accounts Officer, Hangu..... **Respondents**

**PETITION FOR IMPLEMENTATION /**  
**EXECUTION OF THE ORDER/**  
**JUDGMENT DATED 03/05/2024**  
**PASSED BY A WORTHY DIVISION**  
**BENCH OF THIS HON'BLE TRIBUNAL**  
**IN SERVICE APPEAL NO. 888/2018**

**Respectfully Sheweth:**

1. That the petitioner filed the above titled Service Appeal before this Hon'ble Tribunal against the

impugned notification dated 04/08/2017 with the prayer that:

***“On acceptance of appeal, the seniority of the appellant in the impugned seniority list dated 04/08/2017 might be ordered to be corrected and rectified and the appellant should be given his due seniority and all the consequential benefits”***

2. That on 03/05/2024, this Hon'ble Tribunal was pleased to decide the appeal of the petitioner with the direction that:

***“One can safely say that probation period of the appellant ended on 13/05/2017 and he was entitled to further promotion when his junior colleagues were promoted on 26/09/2017, in view of the foregoing, the service appeal is allowed as prayed for.”***

**(Copy of judgment dated 03/05/2024 is attached as Annexure-A)**

3. That the judgment of this Hon'ble Tribunal was served upon the respondents through proper channel and respondents are well aware about

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the judgment and are intentionally not implementing the judgment of this Hon'ble Tribunal, by not considering the promotion case of the petitioner.

**It is, therefore, most humbly prayed that on acceptance of this petition, the judgment dated 03/05/2024 passed in Service Appeal No. 888/2018 may please be implemented in its true letter and spirit and the petitioner may please be promoted, as directed by this Hon'ble Tribunal.**

Dated: 16/10/2024

*Mubarak Khan*  
Petitioner  
Dr. (R) Mubarak Khan

Through

*Zafar Iqbal Dawar*  
Zafar Iqbal Dawar  
Advocate, High Court(s)  
Peshawar

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**BEFORE THE COURT OF SERVICES TRIBUNAL,**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Execution Petition No. \_\_\_\_\_/2024

IN

Service Appeal No. 888/2018

Dr. (R) Mubarak Khan ..... **Petitioner**

**VERSUS**

Secretary Health and another ..... **Respondents**

**AFFIDAVIT**

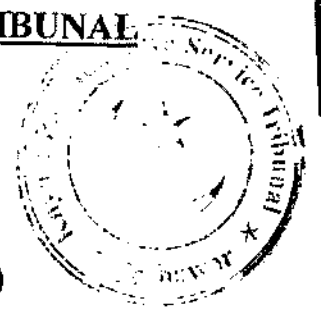
I, **Dr. (R) Mubarak Khan S/o Haji Sardar Ali Khan**  
**R/o House No. 68, Street No. 4, Sector F-2, Phase-VI,**  
**Hayatabad, Peshawar,** do hereby solemnly affirm and  
declare on oath that the contents of accompanying  
**Execution Petition** are true and correct to the best of  
my knowledge and belief and nothing has been  
concealed from this Honorable court.

  
**DEPONENT**

5 Annex = 'A'

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

**Service Appeal No.888/2018**



BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Dr. @ Mubarak Khan S/O Haji Sardar Ali Khan R/O House No. 68, Street No. 4 Sector F-2, Phase-VI, Hayatabad, Peshawar. ....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. Director General Health Peshawar.
4. Account General, Peshawar.
5. District Accounts Officer, Hangu. ....(Respondents)

Mr. Hidayatullah Khattak,  
Advocate ... For appellant

Mr. Muhammad Jan,  
District Attorney ... For respondents

Date of Institution.....	12.07.2018
Date of Hearing.....	03.05.2024
Date of Decision.....	03.05.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 04.08.2017 with the prayer that on acceptance of the appeal, the seniority of the appellant in the impugned seniority list dated 04.08.2017 might be ordered to be corrected and rectified and the appellant should be given his due seniority and all the consequential benefits.

**ATTESTED**  
*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar  
14-10-24

*[Signature]*

SCANNED  
KPST  
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant approached the Honourable Peshawar High Court for redressal of his grievance but on 19.06.2018 the Honourable High Court asked verbally regarding their jurisdiction and counsel for the appellant sought withdrawal of the writ petition on 19.06.2018 to approach the Service Tribunal, which was allowed. Appellant was appointed as Medical Officer (BS- 17) in the Health Department on 23.04.1987 and was promoted as Senior Medical Officer in the year 1997. According to the notification dated 13.05.2016, he was promoted to Principal Medical Officer (BPS- 19) and the respondent No. 3 fixed one year probation period. Respondent No.3, on 04.08.2017, issued a seniority list of the doctors working in the Health Department as Principal Medical Officers (BPS- 19) for promotion to the post of Chief Medical Officer (BPS- 20) in which the appellant's name was mentioned at serial no. 96, much junior to his colleagues who were already junior to him. Appellant submitted an application/representation on 20.11.2017 regarding the seniority list for its rectification. When it was not responded, he once again submitted a representation to the respondent No. 1 for redressal of his grievance. Feeling aggrieved from the inaction of the respondents No. 1 and 3, he preferred the instant service appeal.

3. Respondents were put on notice. Despite repeated opportunities given to them, they did not submit written reply/comments. Vide order sheet dated 12.01.2022, last opportunity was given to them for the same purpose but with the observations that they should cease to have the right of submission of written reply/comments, if they failed to submit the same on or before the next

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar





date i.e. 02.03.2022, and that the appeal should be heard on available record. Perusal of the record revealed that no such reply had been submitted. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case argued that the promotion order dated 04.08.2017 of the Principal Medical Officer to the Chief Medical Officer (BPS- 20) was violative of law and procedure, whereby the name of appellant was placed much junior to others. He argued that the appellant was not given an opportunity of personal hearing regarding his grievance, which was against the settled principle of law of natural justice. As per the condition of promotion in the notification dated 13.05.2016, the probation period was one year which was deliberately considered as two in the case of the appellant which was discrimination with him. He further argued that the appellant was deprived of his legal rights of promotion to CMO (BPS- 20) and he got retired and junior doctor at serial no. 154 was promoted to CMO (BPS- 20). He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was promoted as Principal Medical Officer BS- 19 on 13.05.1996 and was on probation for one year extendable to the next year, if no request was received from the officer on probation. Therefore, he was not entitled to be considered for promotion to the post of Chief Medical Officer (BS- 20). He requested that the appeal might be dismissed.

ATTESTED

EXAMINED  
BY  
SERVICES



6. Arguments and record presented before us show that the appellant, alongwith others, was promoted from BS- 18 to BS- 19 on regular basis vide a notification dated 13.05.2016. The notification stated that all the promoted officers would remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule 15(1) of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989. After that, the respondent department processed the case of promotion of Principal Medical Officer (BS- 19) to the post of Chief Medical Officer (BS- 20) and vide a letter dated 04.08.2017, asked for furnishing the Performance Evaluation Report of different years, alongwith other documents, of various officers from their respective authorities. The name of the appellant was at serial no. 96 of that letter. On 26.09.2017, the provincial government promoted various doctors to BS- 20, but the appellant was ignored. Learned District Attorney as well as departmental representative were asked to produce the working paper, seniority list and minutes of the meeting of Provincial Selection Board in order to ascertain the facts why the appellant was ignored for promotion. No such document could be produced by them, however a letter No. 19963/AF-I dated 04.10.2017 of the Directorate General of Health Services, Peshawar was produced by the learned counsel for the appellant according to which "Dr. Mubarak Khan PMO BS- 19 was promoted to BS- 19 on 13.05.2016 and as such he was on probation for one year extendable to the next year, if no request is received from the officer on probation." The learned District Attorney and the departmental representative also supported the letter and presented the same point. A perusal of the promotion notification dated 13.05.2016 presents a different picture, altogether. According to the

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 Khyber Pakhtunkhwa  
 Government  
 Peshawar

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notification, the probation was for one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule 15(1) of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989. Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 15(1) of Khyber Pakhtunkhwa (APT) Rules, 1989 is reproduced as follows:-

*"6(2) Any appointment of a Civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed."*

*"15(1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year."*

7. After going through the above mentioned section and rule, one fails to understand how the Directorate General stated that the appellant was on probation for one year extendable to next year, when no order of extension in probation was issued. Here we refer to Rule 15(2) of the APT Rules where it is clearly mentioned that on the successful completion of probation period, prescribed in sub-rule (1), the appointing authority may extend the probation for another year by specific order within two months of the expiry of probation order. The same rule 15 in its sub-rule (3) states that if no specific order of extension of probation period under sub-rule (2) is issued, on expiry of one year within two months, the probation shall stand automatically terminated.

8. In the light of above discussion one can safely say that probation period of the appellant ended on 13.05.2017 and he was entitled to further promotion when his junior colleagues were promoted on 26.09.2017.


ATTN:   
 EXAMINER   
 Khyber Pakhtunkhwa   
 Service Tribunal

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9. In view of the foregoing, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 03<sup>rd</sup> day of May, 2024.

SCANNED  
Khyber  
Peshawar

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*FazleSubhan P.S\*

Certified to be true copy

  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

14-10-24

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No. 90 Date 14-10-2024

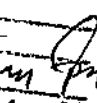
Name of Applicant Zafar Ghorat

Number of Pages 6-P

Copying Fee 30/-

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SA 888/2018


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03<sup>rd</sup> May, 2024 01. Mr. Hidayatullah Khattak, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of May, 2024.*

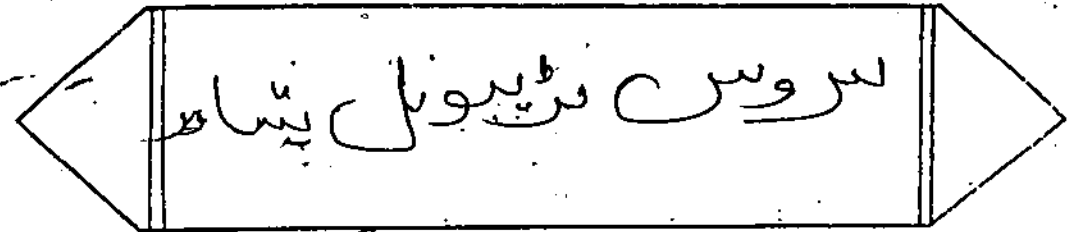
SCANNED  
K.P.S.  
Peshawar

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

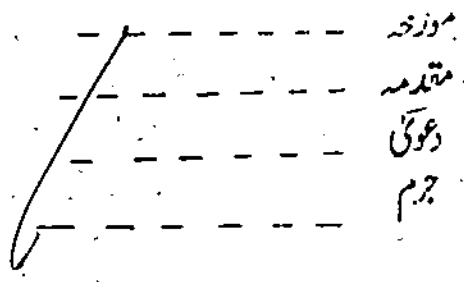
\*Fazal Subhan PS\*

### بعدالت



ڈاکٹر مبارک خان نام

بیلڈ ڈیپارٹمنٹ



موزعہ  
مقدمہ  
دعویٰ  
جرم

### باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ  
 آن مقام پشاور کے لیے ظفر اقبال اور ڈاکٹر مبارک خان  
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقررات ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
 بسورت ڈگری کرنے اجراء اور صولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
 زرایں پر دستخط کرنے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ  
 پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

الرقوم 8024/15/17  
ماہ اکتوبر 2024

بمقام پشاور کے لئے منظور ہے۔

ڈاکٹر مبارک خان  
بیلڈ ڈیپارٹمنٹ

The secretary, Health,

Govt. of Hyderabad Puchstum Khwas

Peshawar

Subject: Implementation of judgement.

R/Sir, I would like to state that the

honourable Service Tribunal decided

a case in favour of Mr. Mubarak-  
(Khan) kindly Sir,

on 03/05/2024. So, judgement in letter  
implement the judgement in letter

and spirit as soon as possible.  
The said judgement is attached

with the application. I shall be very thankful to you  
for that

Yours sincerely,

Dr. Mubarak Khan

~~Mubarak Khan~~  
12/06/2024

Dated: 12/06/2024