

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 473 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.08.2022	<p>The execution petition of Mr. Khan Bahadar submitted today by Mr. Lajbar Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: center;">REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.  
PESHAWAR.

Application No. 472/2022

IN

Appeal No. 1011/2012

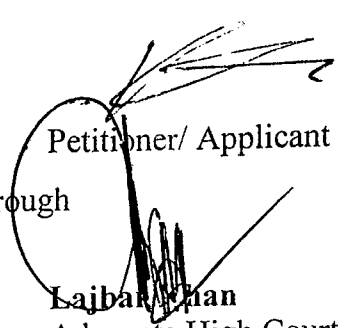
Khan Bahadar ..... Appellant

**Versus**

Govt. of K.P. through Chief Secretary and others..... Respondents

**I N D E X**

S.No.	Description of documents.	Annexure	Pages.
1	Implementation application with affidavit.		1-2
2	Attested copy of grounds of appeal and order/ judgment dated 31.05.2022	A-B	3-10
3	Copy of application for compliance to the authority concerned	C	11-14

Petitioner/ Applicant  
Through  
  
Lajbar Khan  
Advocate High Court.

Dated: 17.08.2022

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Application No. \_\_\_\_\_/2022

IN

Appeal No.1011/2022

Khan Bahadar son of Wazir Khan

R/o Village Chilgul Khan, P.O. Shodag, Tehsil Tangi..... Appellant

**Versus**

- 1) Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Secretary Higher Education, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3) Secretary Administration, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar..... Respondents

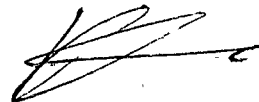
Application for implementation of judgment/  
order of this Hon'ble Tribunal dated  
31.05.2022.

*Respectfully Sheweth;*

- 1) That the applicant/ appellant had assailed his termination order dated 16.08.2012 and 10.09.2012 before this Hon'ble Tribunal. This Hon'ble Tribunal was pleased to accept his service appeal No.1011/2012 vide order and judgment dated 31.05.2022. (Attested copy of grounds of appeal and order/ judgment dated 31.05.2022 are Annexure "A and B").
- 2) That petitioner approached the respondents/ concerned authorities for implementation of the said order and judgment dated 31.05.2022 but they paid no heed. (Copy of application for compliance to the authority concerned is Annexure "C").

- 3) That the respondents are not implementing the order and judgment dated 31.05.2022 of this hon'ble Tribunal which amounts to clear contempt.
- 4) That the implementation of the judgment dated 31.05.2022 is necessary to meet the ends of justice. Justice demands the implementation order/ judgment in its true letter and spirit.

It is, therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be directed to implement the order/ judgment dated 31.05.2022 in true letter and spirit.



Petitioner/ Applicant

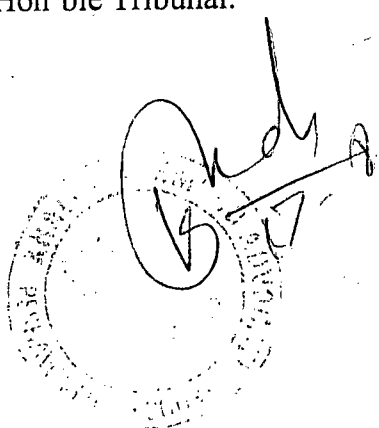
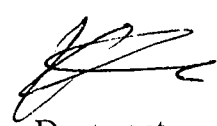
Through



**Lajbar Khan**  
Advocate High Court.

**AFFIDAVIT**

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

ANNEX A

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1011 /2012

1060  
14-9-12

Khan Bahadur Ex-Driver Higher Education Department,  
Peshawar.....Appellant.

Versus

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Higher Education Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department Govt of Khyber Pakhtunkhwa, Peshawar.
4. Mr. Jan Bahadur Driver <sup>o/c sig.</sup> Higher Education Department, Peshawar .....Respondents



Ex parte  
18-9-2013

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was appointed as driver (BPS-4) on regular basis vide order dated 01/10/2011 by the respondent No.2 (Annexure-A).
2. That appellant assumed his assignment and served to the best of his capabilities and no complaint what so ever has ever lodged against him during his entire service period.
3. That to the utter dismay and surprise of the appellant the legal service of the appellant was terminated by respondent No.2 vide order dated 16/08/2012 on the ground that since respondent No.4 Mr. Jan Bahadur

1060

14/9/12

*[Handwritten signature]*


④

has been appointed on the post of the appellant, therefore the service of the appellant shall stand cancelled as evident from the impugned order (Annexure-B).

4. That being aggrieved from the impugned termination order appellant preferred departmental appeal (Annexure-C), but the same has been filed/rejected vide order dated 10/09/2012 (Annexure-D) on the ground that since the termination order has been issued on the direction of respondent No.1, therefore cannot be set aside, hence the instant/present service appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant was appointed on regular basis and the service of regular employee cannot be terminated without adhering to the prescribed procedure provided for in the statute and the statutory rules. The termination order without adhering to the prescribed procedural rules cannot be clothed with validity and action would be mandatory to set aside the same.
- B. That the impugned termination order is the violation of section 16 of the Civil Servant Act, 1973.
- C. That No charge sheet and statement of allegation has been served upon the appellant.
- D. That no inquiry has been conducted.
- E. That appellant has been denied of his defense.

  
P. S. Khan et al.

E2

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- F. That no personal hearing has been provided to the appellant.
- G. That no final show cause has been served upon the appellant.
- H. That no law has been mention in the impugn order that under what law, the service of the appellant has been terminated.
- I. That no word of termination lies in any service law.
- J. That appellant services has been terminated on flimsy ground that since respondent No.4 has been appointed on the post of appellant, therefore, the services of the appellant stood cancelled.
- K. That departmental appeal of the appellant has been rejected on the ground that the impugned termination order has been issued on the direction of respondent No.1, which is not only illegal but in my humble view unwarranted and highly undesirable.
- L. That appellant is jobless since his termination therefore, entitle for back benefits.
- M. That appellant would like to seek the permission of this Honourable Tribunal to advance some more ground at the time of hearing.

It is therefore humbly prayed that on acceptance of this appeal, this Honourable may graciously be pleased to declare the impugned orders dated 16/08/2012 passed by respondent No.2 and the impugned rejection order dated 10-/09/2012 as void, unlawful and without lawful authority and set aside the same and also reinstate the appellant with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Abdul Haleem Khattak  
Service Tribunal  
Peshawar

Through

Appellant  
Abdul Haleem Khattak,  
Advocate, Peshawar.

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Dated: \_\_\_\_\_ / 09/ 2012

**Affidavit**

I, Khan Bahadur Ex-Driver Higher Education Department, Peshawar do hereby solemnly affirms on Oath that the contents of the instant service appeal are correct and true to the best of my knowledge and belief and nothing has been concealed from the notice of the Honourable Tribunal.

Deponent

ATTESTED  
SHAHID MAHMOOD ADVICI  
OATH COMMISSIONER  
PESHAWAR HIGH COURT

*[Signature]*  
*[Signature]*  
11-9-12

*[Signature]*  
HONOURABLE TRIBUNAL  
PESHAWAR

10/8/22  
1600  
18/-  
22/-  
10/8/22  
10/8/22



ANNEX 'B' (D)

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHWAR.**

Service Appeal No. 1011/2012

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)  
MISS. FAREEHA PAUL ... MEMBER (E)

Khan Bahadur Ex-Driver Higher Education Department, Peshawar.  
.... (Appellant)

Versus

1. The Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Higher Education Govt. of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department of Govt. of Khyber Pakhtunkhwa, Peshawar.
4. Mr. Jan Bahadur Driver, Higher Education Department, Peshawar.  
... (Respondents)

Mr. Ashraf Ali Khattak  
Advocate

For appellant

Mr. Muhammad Riaz Paindakhel  
Asstt. Advocate General

For respondents

Date of Institution.....14.09.2012  
 Date of Hearing.....31.05.2022  
 Date of Decision.....31.05.2022

**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 order dated 16.08.2012 whereby service of the appellant had been terminated and order dated 10.09.2012 whereby his departmental appeal was rejected.

*[Handwritten signatures]*

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as driver (BPS-04) on regular basis vide order dated 01.10.2012 by Higher Education Department Khyber Pakhtunkhwa Peshawar. He assumed his duty and started serving to the best of his capabilities and no complaint was ever lodged against him during his entire service period. Suddenly his services were terminated by the department vide order dated 16.08.2012 on the ground that another Driver, Mr. Jan Bahadur, had been appointed on the post of appellant by the Administration Department Government of Khyber Pakhtunkhwa vide its order dated 12.07.2012. Aggrieved from the impugned termination order appellant preferred departmental appeal dated 28.08.2012 but the same was regretted vide letter dated 10.09.2012 on the ground that termination order had been issued on direction of respondent No. 1, the Chief Secretary Khyber Pakhtunkhwa. Hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that respondents had acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan and that he was appointed on regular basis and services of regular employee could not be terminated without adhering to prescribed procedure. He further contended that neither a charge sheet and statement of allegations had been served upon the appellant nor any inquiry had been conducted. The appellant was not given any opportunity of personal hearing, neither was any show

DATED  
[Signature]

[Signature]

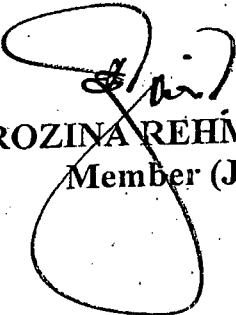
cause notice served upon him. His services had been terminated on flimsy grounds that since respondent No. 04 had been appointed on the post of appellant therefore his services stood cancelled.

5. The learned Assistant Advocate General argued that services of the appellant were terminated because Secretary Administration department had appointed 26 drivers in Civil Secretariat vide order dated 12.07.2012 under the powers vested in him vide section 4(3) of Appointment/Promotion and Transfer Rules 1989 of the recruitment policy which states, "Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission, in all the departments shall continue to be made in accordance with Rule 10, 11 and 12 (Part-III) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the criteria as laid down in S&GAD letter No. SORI(S&GAD)4-1/75, dated 11.02.1987 and the zonal allocation formula contained in S&GAD notification No. SOS.III(S&GAD)3-39/70 dated 02.10.1973 as amended from time to time." Since appointment of the appellant was neither in accordance with Section 3 of (Appointment Promotion and Transfer) Rules nor in accordance with recruitment policy therefore it was cancelled.

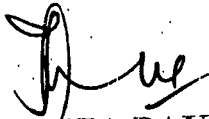
6. After going through the entire record available before us and hearing the arguments put forth by the learned counsels it is clear that appointment order of the appellant was issued by the Govt. of Khyber Pakhtunkhwa Higher Education Department in the name of Secretary Higher Education who, in our opinion, is a responsible person and it not expected that he would go against the Appointment, Promotion and Transfer Rules 1989. He issued that order under Rule 10 and sub rule 2 of APT rules which is very clear that initial

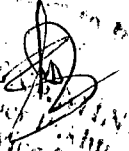
recruitment to posts which do not fall within the purview of Commission shall be made by Departmental Selection Committee after vacancies are advertised in newspaper. Appointment order of the appellant indicates that his services were governed by Civil Servants Act 1973 and all the rules made there-under. In view of that it was noted that the entire action taken against him was not in accordance with the law/rules. The appeal in hand is therefore allowed and the impugned orders dated 16.08.2012 and 10.09.2012 are set aside. Respondents are directed to reinstate the appellant in service with effect from 16.08.2012 with all back benefits including his service, salary and other allied benefits. Parties are left to bear their own costs. Consign.

7. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31<sup>th</sup> day of May, 2022.

  
 (ROZINA REHMAN)  
 Member (J)



  
 (FAREEHA PAUL)  
 Member (E)

  
 Certified copy for record  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Date of ...  
 Number of copies 2000  
 Copying Fee 22/-  
 ... 4/-  
 ... 24/-

10/8/22

10/8/22

10/8/22

ANNEX C (11)

To

Eminent,  
Secretary Higher Education,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject:

**APPLICATION FOR COMPLIANCE OF THE ORDER/  
JUDGMENT OF LEARNED KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR DATED:31.05.2022,  
IN ITS TRUE LETTER AND SPIRIT.**

Respected Sir,

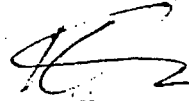
Concisely to the facts that applicant being Ex-Driver of your esteemed department terminated vide impugned order dated:16.08.2012 as well as 10.09.2012, which assailed by the applicant before the learned Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 1011/2012, which ended up on 31.05.2022, in favor of the applicant and the relevant last portion is of the judgment is reproduce herein for your kind attraction;

"the appeal in hand is therefore allowed and the impugned orders dated:16.08.2012 and 10.09.2012 are set aside. Respondents are directed to reinstate the appellant in service with effect from 16.08.2012 with all back benefits including his service, salary and other allied benefits"

(COPY OF ORDER/JUDGMENT IS ANNEXED HEREWITH)

It is therefore, requested that the above order of learned Khyber Pakhtunkhwa Service Tribunal may very graciously please comply in its letter and spirit and applicant may please be reinstated on the post of driver with all back benefits.

Applicant



**KHAN BAHADAR**  
S/o Wazir Khan  
R/o Village Chilgul Khan,  
P.O. Shodag, Tehsil Tangi,  
District Charsadda.  
Cell:0346-5348206

Dated:04.08.2022

(18)

AS (D)

Seq. D. NO. 1017  
04/08/22  
So (D.F.) 5/8/22

(13)

To

Eminent,  
Secretary Administration,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject:

**APPLICATION FOR COMPLIANCE OF THE ORDER/  
JUDGMENT OF LEARNED KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR DATED:31.05.2022,  
IN ITS TRUE LETTER AND SPIRIT.**

Respected Sir,

Concisely to the facts that applicant being Ex-Driver of your esteemed department terminated vide impugned order dated:16.08.2012 as well as 10.09.2012, which assailed by the applicant before the learned Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 1011/2012, which ended up on 31.05.2022, in favor of the applicant and the relevant last portion is of the judgment is reproduce herein for your kind attraction;

"the appeal in hand is therefore allowed and the impugned orders dated:16.08.2012 and 10.09.2012 are set aside. Respondents are directed to reinstate the appellant in service with effect from 16.08.2012 with all back benefits including his service, salary and other allied benefits"

(COPY OF ORDER/JUDGMENT IS ANNEXED HEREWITH)

It is therefore, requested that the above order of learned Khyber Pakhtunkhwa Service Tribunal may very graciously please comply in its letter and spirit and applicant may please be reinstated on the post of driver with all back benefits.

Applicant



**KHAN BAHADAR**  
S/o Wazir Khan  
R/o Village Chilgul Khan,  
P.O. Shodag, Tehsil Tangi,  
District Charsadda.  
Cell:0346-5348206

Dated:04.08.2022

(14)

Pa to Adm Secy-t Admn Dept  
Diary No. 1974 Dated. 04/08

4-8

Ps to Secy Admn  
Diary No 3181 Date: 4-8-22

DSCA 2243

04-08-22

Sent to SO (A)



وکالت نامہ

بعدالت دیکر لکھنؤ کو خواہد رسید سرس و فیڈرل شریعت کورٹ

خان لاجبار نام گورنمنٹ

دعویٰ اجرم

تاریخ

ایف آئی آر

تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بہ مقام

لاجبر خان خلیل ایڈووکیٹ ہائی کورٹ و فیڈرل شریعت کورٹ آف پاکستان

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بزور تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد تاشی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا یکطرفہ درخواست حکم اشناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا تنگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جائز التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند رہے مورخہ \_\_\_\_\_ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Lajbar Khan Khalil  
Advocate High Court  
&  
Federal Shariat Court  
of Pakistan  
CNIC No. 17301-1573931-1  
BC No. 10-7631  
Cell No. 0333-9133651  
Email: lajbark758@gmail.com