

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 477 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.08.2022	<p style="text-align: center;">The execution petition of Mr. Noor Muhammad submitted today by Mr. Muhammad Anwar Awan Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan 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>

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: _____

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <i>Nood M. vs KPK</i>	✓	
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 paged?	✓	
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 AG/DAG?	✓	
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 cutting/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	✓	<i>No</i>
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		<i>No</i>
26	Whether copies of comments/reply/rejoinder submitted? On		<i>No</i>
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		<i>No</i>

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

Name: _____

Signature: _____

Dated: _____

Anwar ad

BEFORE THE KHBER PAKHTOON KHAWA SERVICE TRIBUNAL
PESHAWAR CAMP AT D.I.KHAN.

Implementation/Execution Petition No. 477 of 2022.

Noor Muhammad

VERSUS

Govt. of KPK and others

INDEX

No.	Particulars	Annexure	Pages
1	Implementation /Execution Petition		1-2
2	Judgment dated; 26-02-2020	A	3-10
3	Wakalat Nama	B	11-12

Your humble Petitioner

نو محمد

Noor Muhammad

Dated;

Anwar Adv

Mohammad Anwar Awan
Advocate Supreme Court.

- 1 -

**BEFORE THE KHYBER PAKHTOON KHAWA SERVICE TRIBUNAL
PESHAWAR CAMP AT D.I.KHAN.**

Implementation/Execution Petition No. 477..... of 2022.

Noor Muhammad S/O Noor Ahmad Caste Dhoter R/O Village Matwala
Shah Tehsil Pharpur, D.I.Khan. Sweeper GHS for Boys Musazai D.I.Khan.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1037

Dated 22/8/2022

VERSUS

1. Director Elementary and Secondary Education Department Peshawar.
2. District Education Officer Elementary and Secondary Education Department D.I.Khan.
3. Sub-Divisional Education Officer (Male) Tehsil Daraban Kalan D.I.Khan.
4. District Account Officer Kachery Road Dera Ismail Khan.
5. Government of KP Through Secretary Elementary And Secondary Education Department Peshawar.
6. Head Master GHS Musazai Sharif Daraban D.I.Khan.

**IMPLEMENTATION PETITION/EXECUTION PETITION
OF JUDGMENT DATED; 26-02-2020 REGARDING
REINSTATEMENT OF PETITIONER.**

Annex

That the brief facts of the case are as under:

1. That petitioner joined the services as Sweeper on 28-03-2013 by the competent authority. The petitioner was removed from service on the allegation of absence from duty vide order dated 31-12-2017. The appellant filed departmental appeal and thereafter file service appeal which was partially accepted by the Hon'ble Court Vide Judgment Dated 26-02-2020. Copy of Service Appeal and Judgment is Annexure A.
2. That after the lapse of more than two years, Department is hesitating to reinstate the according to Judgment of Hon'ble Service Tribunal dated; 26-02-

2020 in Service Appeal No. 608/2018 nor concluded the de-novo inquiry so petitioner has no other remedy but to file implementation petition.

3. That respondents are legally bound to issue the reinstatement order of petitioner and conclude the inquiry within 90 days but they are hesitating to implement the judgment of this Hon'ble Court.

In view of the above, it is, therefore, most respectfully prayed that on acceptance this petition, may kindly implement the judgment dated; 26-02-2020 issued in Service Appeal No 608/2018. Any other appropriate relief this Hon'ble court may deem fit in the best interest of justice may also be granted to the appellant.

YOUR HUMBLE APPELLANT

نوور محمد

Noor Muhammad
Through Counsel

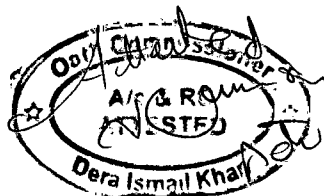
Dated;

انوار ادو

Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Noor Muhammad do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.



نوور محمد

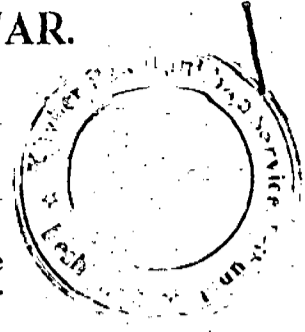
Deponent.

12103-1499871-7

A-3

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal no. 608 of 2018.



Noor Muhammad S/O Noor Ahmad Caste Dahotar R/O Village Matwala Shah Tehsil Pharpur District D.I.Khan Sweeper GHS for Boys Musazai D.I.Khan.

Khyber Pakhtunkhwa Service Tribunal

EP/18/1/609

Dated 23-4-2018

VERSUS

- 1. Director Elementary and Secondary Education Deptt: Peshawar.
- 2. District Education officer Elementary and Secondary Education Deptt: D I Khan.
- 3. Sub-Divisional Education Officer (Male) Tehsil Darabin Kalan D.I.Khan.
- 4. District Account Officer Kechary Road Dera Ismail Khan.
- 5. Government of KPK through secretary Elementary and Secondary Education Deptt: Peshawar.
- 6. Head Master GHS Musa Zai Sharif Daraban D.I.Khan

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ILLEGAL AND MALAFIDE REMOVAL FROM SERVICE ORDER ON THE BACK OF APPELLANT.

Anwar

That the brief facts of the case are as under:

- 1. That Appellant's father, Noor Ahmad, was serving as Sweeper and was retired from service. The petitioner applied for appointment as class IV on son's quota but was refused. The petitioner filed a civil suit seeking his employment in accordance with the policy of Government but the suit was dismissed. The petitioner challenged the judgment and decree by way of appeal which was accepted and petitioner was appointed as Sweeper at GHS Musazai Sharif vide Office order dated; 28-03-2013. Copy of Appointment Order is Annexure A.
- 2. That the Appellant was performing his duties to the entire satisfaction of his high ups but during the service Appellant's father was seriously fell ill and appellant filed application for grant of leave to attend his ailing father. After the expiry of leave the appellant wanted to resume his duty but the respondent No.6, Headmaster, restrained the petitioner from

edito- do

REGISTRAR

14/18

REGISTRAR AND HEAD

[Signature]

performing his duty. The appellant filed applications to respondent No.2 regarding the illegal behavior of respondent No.6 but no action was taken. Copy of application and postal receipts is Annexure B.

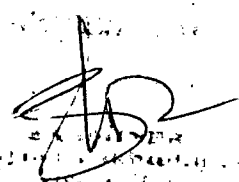
3. That, on 16-01-2018 appellant visited the Education Office regarding injustice done by the respondent No.6 but surprised to know that he is removed from the service vide order dated; 30-12-2017 without initiating any proceeding under E & D Rules. Copy of removal order is Annexure C.
4. That, feeling aggrieved the appellant filed departmental appeal against the removal order dated; 30-12-2017 to respondent No.1 but till now appeal is not decided. Copy of departmental appeal along with postal receipt is Annexure D.
5. That feeling aggrieved from above said action appellant is constrained to approaches this honorable court on the following amongst other:

GROUNDS;

Answer

1. That the appellant is not treated in accordance with law and the actions of the respondents are malafide besides being discriminatory and harsh.
2. That appellant is being penalized without giving him any opportunity of hearing, he was neither associated with any proceeding nor have given any show cause notice by the department, which is against the principal of natural justice.
3. That it is an admitted fact that petitioner filed application to respondent No.2 through post office regarding the conduct of respondent no.6 but no action was taken against him but appellant was removed from service without conducting any inquiry. It is also an admitted fact that appellant was condemned unheard.

In view of the above, It is, therefore, most respectfully prayed that on acceptance this appeal this honorable court may please to declare the office order No. 30061-66 dated; 30-



12-2017 is illegal, void, without lawful authority and of no legal effect and respondents may please be directed to reinstate the appellant with all back benefits.

YOUR HUMBLE APPELLANT

Noor Muhammad

Noor Muhammad
Through Counsel

Dated; 17-04-2018.

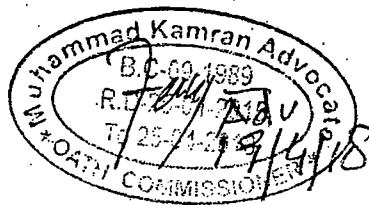
Anwar

Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Noor Muhammad do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.

Deponent.



Noor Muhammad

16/8/22

[Signature]

14/12/20
5/1/-
18/1/-

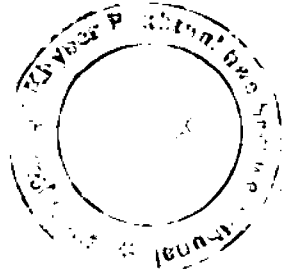
16/8/22
16/8/22

- 6 -

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

SERVICE APPEAL NO. 608/2018

Date of institution ... 23.04.2018
Date of judgment ... 26.02.2020



Noor Muhammad S/O Noor Ahmad Caste Dahotar
R/o Village Matwala Shah Tehsil Pharpur District D.I.Khan
Sweeper GHS for Boys Musazai D.I.Khan. ... (Appellant)

VERSUS

1. Director Elementary & Secondary Education Department Peshawar.
2. District Education Officer Elementary & Secondary Education Department D.I.Khan.
3. Sub-Divisional Education Officer (Male) Tehsil Darabin Kalan D.I.Khan.
4. District Account Officer Kechary Road Dera Ismail Khan.
5. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.
6. Head Master GHS Musazai Sharif Daraban D.I.Khan. ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ILLEGAL AND MALAFIDE REMOVAL
FROM SERVICE ORDER ON THE BACK OF APPELLANT.

Mr. Muhammad Anwar Awan, Advocate. .. For appellant.
Mr. Ziaullah, Deputy District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. MIAN MOHAMMAD .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Kamran ADO for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present appeal are that the appellant was appointed as Sweeper vide order dated 28.03.2013 by the competent authority. He was imposed major penalty of removal from service vide order dated 30.12.2017 on the allegation of absence from duty. The appellant filed departmental appeal on 18.01.2018 which was not responded hence, the present service appeal on 23.04.2018.
3. Respondents were summoned who contested the appeal by filing written reply/comments.
4. Learned counsel for the appellant contended that the appellant was serving as Sweeper in Education Department. It was further contended that the appellant was performing his duty regularly but during service, the father of the appellant became seriously ill and the appellant filed application for grant of leave to attend his ailing father which was allowed and after expiry of leave, the appellant wanted to resume his duty but the respondent No. 6 i.e Headmaster of the said school restrained the appellant from performing duty, therefore, the appellant filed application to respondent No. 2 i.e District Education Officer regarding the illegal behavior of respondent No. 6 but no action was taken. It was further contended that despite such application, the competent authority imposed major penalty of removal from service. It was further contended that neither any absence notice was issued to the appellant nor any notice regarding absence of the appellant was advertised in the newspaper nor any charge sheet, statement of allegation was served upon the appellant nor

MC Appm in
26.2.2022

[Handwritten signature]

proper inquiry was conducted nor any final show-cause notice was issued to the appellant, therefore, the appellant was condemned unheard, therefore, it was contended that the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Education Department as Sweeper. It was further contended that the appellant remained absent from duty without the permission of competent authority. It was further contended that absence notice was also issued to the appellant at his home address but the appellant did not attend the duty. It was further contended that the show-cause notice was also advertised in the two newspapers but again the appellant did not attend the duty, therefore, it was vehemently contended that the appellant was rightly imposed major penalty of removal from service after fulfilling of all the codal formalities and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Sweeper in Education Department. He was imposed major penalty of removal from service vide order dated 30.12.2017. The record further reveals that the appellant has claimed in service appeal that his father was seriously ill and he was granted leave to attend his ailing father but after expiry of the leave when the appellant wanted to resume the duty, the respondent No. 6 i.e Headmaster of the said school

M. Amin
26.2.2020

AS

8-

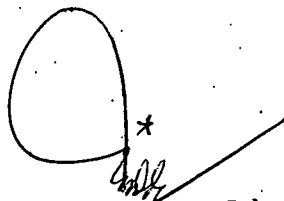
restrained the appellant from performing his duty due to some grudges. The record also reveals that the appellant also submitted application on 01.02.2017 to the competent authority i.e District Education Officer Male regarding the said allegation that the headmaster of the said school has restrained him from resuming his duty and if he has submitted any wrong report regarding the absence of the appellant than the same may be considered as wrong. The record further reveals that the appellant has submitted second application regarding the same allegation against the Headmaster on 08.04.2017 to District Education Officer but the said applications were not considered by the competent authority and despite the applications dated 01.02.2017 & 08.04.2017, the competent authority imposed ^{on} him major penalty of removal from service vide order dated 30.12.2017. The record further reveals that the appellant also filed departmental appeal to departmental authority wherein he also taken the same plea but the departmental authority did not decide the departmental appeal nor probed into the matter regarding the plea taken by the appellant in his departmental appeal. Admittedly, the appellant has claimed in service appeal as well as in departmental appeal that he was restrained by the Headmaster from resuming his duty and in this respect he also submitted two applications to the competent authority but the competent authority did not bother to probe into the matter although the competent authority was required to consider the plea taken by the appellant in the aforesaid two applications through regular

26.12.2020
 M. H. M. M.

4

inquiry but the competent authority has straight away without considering the applications of the appellant, imposed major penalty of removal from service, therefore, the impugned order is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondents to conduct de-novo regular inquiry as to whether the appellant was restrained by the Headmaster from resuming duty or he remained absent from duty deliberately by issuing him charge sheet, statement of allegation, associating the appellant into regular inquiry, providing him opportunity of cross examination and issuing him final show-cause notice alongwith copy of inquiry report, within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.02.2020



(MIAN MOHAMMAD)
MEMBER
CAMP COURT D.I.KHAN

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT D.I.KHAN



2400
26/2
4/2
30/2

16/8/22

16/8/22
16/8/22

B

- 11 T

VAKALATNAMA

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR CAMP
DERA ISMAIL KHAN

Noor M **VERSUS** *Govt of KPK etc*

TITLE *Execution Petition*

I/WE *Noor M*

The Above Named *Petitioner* hereby appoint

MUHAMMAD ANWAR AWAN ADVOCATE SUPREME COURT,

in the above Captioned Cases to all or any of the following Acts Deeds & Things.

- ✓ To Appear, Act & Plead for Me/Us in the above mentioned cases in this Court/Tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
- ✓ To Sign, Verify, File OR Withdraw all proceedings, Petitions, Appeals, Affidavits, Applications for Compromise OR Withdrawals OR for the Submission of Arbitration of the said case OR any other Documents may be Deemed Necessary OR Advisable by them by the Conduct, Prosecution OR Defense of the above case at all its stages.
- ✓ To Receive Payments, Issue receipts for all moneys that may be OR become Due & Payable to us during the course on Conclusion of the Proceedings.
- ✓ To do all other Acts & Things, Which may be Deemed Necessary OR Advisable during the course of Proceedings.

AND HEREBY AGREE:

- To Ratify Whatever Advocates may do the Proceedings.
- Not to Hold the Advantages Responsibilities if the said case be proceed Ex-parte OR Dismissed in Default in Consequence of their Absence from the Court when it is called for Hearing.
- That the Advocates shall be entitled to withdraw from the Prosecution of the said case if the Whole or any part of the Agreed Fee Remain Un-Paid.
- That Advocates may be Permitted to argue any other point at the time of Arguments.

In Witness Whereof I/We have signed this Vakalatnama here under the Contents of which have been Read/Explained to Me/Us which is fully understood by Me/Us.

Dated: _____

Noor Muhammad - Applicant

Accepted By:

SIGNATURE OF EXECUTANT (S)

Anwar Adv

3/9

**MUHAMMAD ANWAR AWAN
ADVOCATES SUPREME COURT
03339962231**

Mob:- 0344 9369299

C.N.I.C:- 12103-1499871-7

VAKALATNAMA

12

BEFORE THE COURT OF KPK SERVICE TRIBUNAL PESHAWAR
CAMP D.I.KHAN

Noor M.

VERSUS

KPK etc

TITLE Implementation Petition

I/WE Petitioners

The Above Named Noor M. hereby appoint

MUHAMMAD SAJID BALOCH ADVOCATE HIGH COURT,

in the above Captioned Cases to all or any of the following Acts Deeds & Things.

- ✓ To Appear, Act & Plead for Me/Us in the above mentioned cases in this Court/Tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
- ✓ To Sign, Verify, File OR Withdraw all proceedings, Petitions, Appeals, Affidavits, Applications for Compromise OR Withdrawals OR for the Submission of Arbitration of the said case OR any other Documents may be Deemed Necessary OR Advisable by them by the Conduct, Prosecution OR Defense of the above case at all its stages.
- ✓ To Receive Payments, Issue receipts for all moneys that may be OR become Due & Payable to us during the course on Conclusion of the Proceedings.
- ✓ To do all other Acts & Things, Which may be Deemed Necessary OR Advisable during the course of Proceedings.

AND HEREBY AGREE:

- To Ratify Whatever Advocates may do the Proceedings.
- Not to Hold the Advantages Responsibilities if the said case be proceed Ex-parte OR Dismissed in Default in Consequence of their Absence from the Court when it is called for Hearing.
- That the Advocates shall be entitled to withdraw from the Prosecution of the said case if the Whole or any part of the Agreed Fee Remain Un-Paid.
- That Advocates may be Permitted to argue any other point at the time of Arguments.

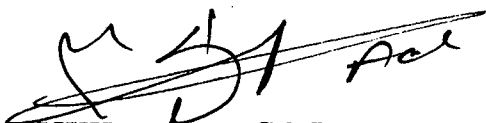
In Witness Whereof I/We have signed this Vakalatnama here under the Contents of which have been Read/Explained to Me/Us which is fully understood by Me/Us.

Dated: _____

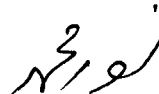
Noor M. - - - Appellant

Accepted By:

SIGNATURE OF EXECUTANT (S)



**MUHAMMAD SAJID BALOCH
ADVOCATE HIGH COURT
03327225053**



Mob:-- 0344 936 9299

C.N.I.C:-- 12103-1499871-7