

7th July, 2022

None for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Riaz, Supdt for respondents present.

Counsel are on strike. Representative of the respondents submitted reply to the execution petition which is placed on file. To come up for arguments/further proceedings on 08.09.2022 before S.B.

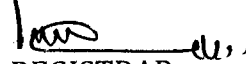
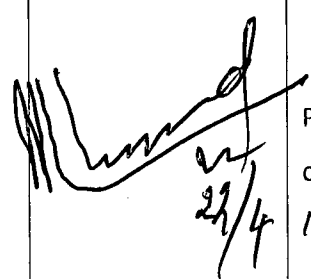




(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 174/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.04.2022	<p>The execution petition of Mr. Habibullah Wazir submitted today by Mr. Nsir Mehmood Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	 22/4	<p>This execution petition be put up before Single Bench at Peshawar on <u>27.05.2022</u>. Notices to the appellant and his counsel be also issued for the date fixed. <i>Notices be also issued the Respondents for IR</i></p> <p style="text-align: right;"> CHAIRMAN</p>
27 th	May, 2022	<p>Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.</p> <p>Due to general strike of the bar. Case is adjourned. To come up for the same on 07.07.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Implementation Petition No 174 /2021

In

Service Appeal No 668/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 505

Dated 6-4-2022

Mr. Habib Ullah Wazir Assitant Commissioner District
Mohmand.

.....**Applicant/Petitioner**

V E R S U S

1. Chief Minister, Govt, of KPK, Peshawar
2. Govt. of KPK through Chief Secretary, Civil Secretariat,
Peshawar

.....**Respondents**

**PETITION FOR THE IMPLEMENTATION OF
ORDER/JUDGMENT DATED 05.04.2021 PASSED
BY DIVISIONAL BENCH OF THIS HONORABLE
TRIBUNAL IN THE ABOVE TITLED SERVICE
APPEAL.**

Respectfully Submitted:-

1. That the applicant/appellant earlier filed Service Appeal No
668/2019 for promotion to PMS along with all consequential

benefits i.e. Seniority and other benefits in the light of Supreme Court of Pakistan judgment dated 29.09.2015, which was allowed vide judgment dated 05.04.2021 in the following terms:

“The instant appeal is accepted on the above terms with directions to the respondents to insert name of the appellant in the seniority list of his batch mates below the name of Akram Shah without disturbing his inter se seniority. Parties are left to bear their own costs”.

(Copy of the Order and Judgment dated 05.04.2021 is enclosed as Annexure A).

2. That the applicant/appellant time and again approached the official respondents for the implementation of the Order and Judgment dated 05.04.2021 of this honorable Tribunal but of no use and the applicant /appellant has not been provided the subject relief as per the Judgment of this honorable tribunal.
3. That the respondents are not ready to implement the Order and Judgment of this honorable Tribunal dated 05.04.2021 in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 05.04.2021 of this honorable Tribunal.

4. That the official respondents while defying and defeating the legal rights accrued to the applicant in the subject judgment dated 05.04.2021.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 05.04.2021 passed in Service Appeal No 668/2019 without any further delay.

Dated:-07.09.2021

Applicant/Petitioner

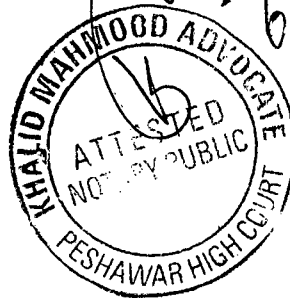
Through

Nasir Mahmood

Advocate Supreme Court of Pakistan
Add: Office 622, 6th Floor, Pak Medical
Center, Peshawar

AFFIDAVIT

I, Mr. Habib Ullah Wazir Assitant Commissioner District Mohmand, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 668/2019

Date of Institution: 22.05.2019
Date of Decision: 05.04.2021



Mr. Habib Ullah Wazir Assistant Commissioner Nawagai Tribal District Bajaur.
... (Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Minister and one other.
... (Respondents)

Mr. Nasir Mahmood
Advocate ... For Appellant

Muhammad Rasheed
Deputy District Attorney ... For Respondents

MRS. ROZINA REHMAN ... MEMBER (J)
MR. ATIQ UR REHMAN WAZIR ... MEMBER (E)

JUDGMENT: -

Mr. ATIQ UR REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Assistant on 24-04-2006 in Board of Revenue on the recommendations of Public Service Commission. The appellant along with 25 other assistants was considered for promotion to the post of Tehsildar (BPS-16) under the existing rules, but only 8 assistants were promoted vide notification dated 29-10-200-11 excluding the appellant. In the meanwhile, rules for promotion were amended on 29-09-2012, whereby the assistants were now required to be promoted to the post of Naib Tehsildar (BPS-14) instead of Tehsildar (BPS-16). The appellant filed departmental appeal, which was unheeded to and which prompted him to approach

ATTESTED

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Service Tribunal
Peshawar

Peshawar High Court, Service Tribunal and ultimately the Supreme Court of Pakistan. The Supreme Court of Pakistan vide judgment dated 29-09-2015 accepted his appeal and the appellant was granted promotion w.e.f 29-10-2011, the date when his other colleagues were promoted as well as all back benefits including salary etc. For next round of promotion to the post of PMS(BPS-17), case of the appellant was considered in PSB meetings dated 10-05-2016, 30-01-2017, 19-05-2017, 28-12-2017 and 03-05-2018, but every time his case was deferred either for non-availability of his service record or shortage in required service length. Finally the PSB in its meeting held on 26-12-2018, promoted the appellant to BPS-17 vide notification dated 16-01-2019, but with immediate effect. Feeling aggrieved, the appellant filed departmental appeal dated 29-01-2019, which was not responded, hence the instant service appeal with prayers that the appellant may be promoted with all back benefits from 21-03-2013 on acting charge basis to PMS and 07-06-2016 on regular basis when services of his colleagues were regularized by Provincial Selection Board in PMS.

02. Written reply/comments were submitted by respondents.
03. Arguments heard and record perused.
04. Learned counsel for the appellant contended that case of the appellant was considered by PBS on many occasions, but case of the appellant was deferred every time due to non availability of record and shortage in required length of service. That it was not responsibility of the appellant to present record to the PSB. Learned counsel for the appellant further added that the appellant was promoted to the post of Tehsildar (BPS-

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EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

16) by orders of Supreme Court of Pakistan vide judgment dated 29-09-2015 with retrospective effect as well as with all back benefits and promotion order dated 14-12-2015 to this effect was issued by Senior Member Board of Revenue clearly delineating his promotion w.e.f 29-10-2011 and with all back benefits including seniority. That respondents are counting his service with effect from 14-12-2015, whereas the appellant was promoted w.e.f 29-10-2011 and denial of promotion on this account amounts to contempt of judgment of Supreme Court of Pakistan and as per article 189 of the Constitution, every person/authority is bound by law to give respect to the judgment of Supreme Court of Pakistan. Learned counsel for the appellant added that the appellant was every time deferred by PSB and not superseded, hence he is entitled to be placed in the proper place in the seniority list alongwith his other colleagues, whose services were regularized with effect from 07-06-2016. Learned counsel for the appellant argued that the appellant was fit for promotion in every respect having the prescribed qualifications, obtained the necessary training as well as having the required length of service. Learned counsel for the appellant prayed that on acceptance of the instant appeal, the appellant may be promoted with all back benefits from 21-03-2013 on acting charge basis to PMS and 07-06-2016 on regular basis when services of his colleagues were regularized by Provincial Selection Board.

05. Learned Deputy District Attorney appeared on behalf of official respondents argued that the appellant has not made Board of Revenue as Party, which was a necessary party. Learned Deputy District Attorney further contended that the appellant was not having the required length of service, as was required in the PMS Rules, 2007. Learned Deputy District Attorney

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further contended that the appellant has not passed departmental exam of 9 weeks mandatory training nor he was graduate at that time. Learned Deputy District Attorney added that the appellant was deferred by PSB due to non-availability of his record and shortage in required length of service. Learned Deputy District Attorney further added that the appellant was promoted by PSB in its meeting held on 26.12.2018 on regular basis and with immediate effect, as and when the appellant completed the requisite criteria for promotion.

06. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant was promoted as Tehsildar with retrospective effect i.e. 29-10-2011 and with all back benefits vide order dated 14-12-2015 in pursuance of Judgment dated 29-09-2015 of Supreme Court of Pakistan. Such order is very explicit and clear, granting retrospective promotion to the appellant along with all back benefits, which means that his promotion from 29-10-2011 shall be considered as it actually happened on 29-10-2011 with no second consideration. We have noted that date of promotion of the appellant to BPS-16 is shown as 14-12-2015, which however is 29-10-2011 for all practical purposes and which shall be considered as such. One of the main issues, for which case of the appellant was deferred repeatedly, was shortfall in his length of service. The promotion board has deferred his case many times for want of the required length of service in his existing position, which was three years. It was noted that the appellant had more than four years service, when he was first considered for promotion in PSB meeting held on 10-05-2016 and it was malafide as well as negligence on part of the respondents counting his promotion date from 14-12-2015 instead

ATTESTED

of 29-10-2011. This Tribunal also noted that the PSB did not consider his case in the first PSB meeting held on 10-05-2016 under the pretext that his service record is not available, which obviously was not responsibility of the appellant, nor he was supposed to suffer for the follies and indolence of the respondents. In subsequent PSBs, the appellant was deferred for want of the required length of service, which was not warranted. It was also noted that case of appellant was deferred by PSB and the appellant was not superseded during the course, hence his case otherwise does not fall in the category to disturb his Inter se seniority as is provided in Rule 17(1) Explanation II of Appointment, Promotion & Transfer Rules, 1989. To this effect, the Supreme Court of Pakistan in its Judgment in 2016 SCMR 1784 have inferred that if a civil servant is deferred due to certain reason and that reason is later on resolved, then on subsequent promotion, such civil servant would rank and deemed to have been promoted in the same batch at par with his contemporary batch mates, who were promoted earlier to him. Record reveals that the appellant obtained his postgraduate degree in English in the year 2000. The appellant was otherwise fit for promotion, which is evident from the fact that board of revenue submitted his working papers dated 01-05-2016 declaring him fit for promotion. The seniority list as stood on 01-05-2016 reflects name of the appellant at Serial No. 14 below Mr. Akram Shah, which seniority needs to be maintained amongst his batch mates after their promotion to the next grade. We are conscious of the fact that delayed promotion of the appellant to the post of Tehsildar also delayed his mandatory training, which was completed in May, 2017, which also was not fault of the appellant, as he would have done it much earlier, if he was

actually given promotion in 2011 along with his batch mates. In a situation, the appellant suffered for earning his rightful promotion to BPS-16, now again subjecting him to the same situation would be unjust. The appellant was kept deprived from his rightful promotion to BPS-17 along with his batch mates in the year 2016, but his right of seniority shall not infringe.


07. The instant appeal is accepted on the above terms with directions to the respondents to insert name of the appellant in the seniority list of his batch mates below the name of Akram Shah without disturbing his inter se seniority. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.04.2021


(ROZINA REHMAN)
MEMBER (J)

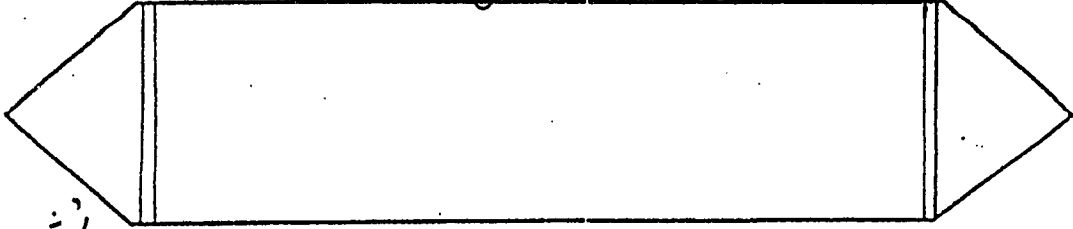

(ATIQ UR REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/4/2021
Number of Words 2800
Copying Fee 30
Urgency Fee 4
Total Fee 34
Name of Copy [Signature]
Date of Completion of Copy 12-4-2021
Date of Delivery of Copy 12-4-2021

بعد الت سرورس نر ایجنوں کالکام کارپوریشن



2022ء منجانب پیشکش
بنام گودمنڈ

حسب اللہ وزیر

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام پیشکش کیلئے خاکہ صحیحہ دعا
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted

2022
والہ العبد

المقوم
بمقام
پشاور

کے لئے منظور ہے۔

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. _____

Appeal No. EP No. 174 of 2022

Muhammad Ali Wajir Appellant/Petitioner

Chief Minister Govt of KPK Versus Respondent

Respondent No. (2)

Notice to: — Govt of KPK through Chief Civil Secretariat Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 27/05/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 27/5

Day of April 2022

(For Implementation Report)

[Signature] 16/05/2022

[Signature]
 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.