


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 537/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.09.2022	<p>The execution petition of Mr. Usman Ghani submitted today by Syed Abdul Haq Advocate. It is fixed for implementation report before touring Single Bench at Swat 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  REGISTRAR</p>

AAG

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

C.M. _____/2022 IN
Service Appeal 1443 of 2019

Usman GhaniApplicant
VERSUS

Director E&SE and othersRespondents.

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Applicant/appellant through Counsel


SYED ABDUL HAQ (ASC)
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0333-9546154

(1)

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

C.M. _____/2022 IN

Service Appeal 1443 of 2019

Usman Ghani Son of Fazal Ghani Charbagh, tehsil Charbagh District Swat, Retired from District Education Department (Male) as Assistant (BPS-16)**Applicant**

VERSUS

1. Director E&SE Department Khyber Pakhtunkhwa at Peshawar.
2. District Education (Male) District Swat. **Respondents**

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT RENDERED BY THIS HONOURABLE
TRIBUNAL IN SERVICE APPEAL BEARING
NO.1443 OF 2019 DATED 08.12.2021.**

Respectfully Sheweth;

The facts of the instant application are, as under.

- 1) That the appellant/applicant instituted a service bearing no. 1443/2019 before this honourable Tribunal on 01.11.2019 wherein comments were called from the

concerned respondents and the case was posted for arguments.

- 2) That after hearing this honourable Tribunal accepted the appeal vide judgment dated 08.12.2021 and directed the respondents to grant Notional promotion to the applicant/appellant. (Copy of judgment dated 08.12.2021 is attached as annexure-A).
- 3) That on 29.12.2021 receiving the judgment, the applicant approached the office of respondent No.1 and submitted the judgment a/w application before the respondents for compliance/implementation of such judgment in its true spirit.
- 4) That the applicant being a senior citizen visited the office concerned time and again and was told verbally that the judgment of this honourable Tribunal would be implemented in letter and spirit, but after passing some days he was informed that the respondents are intended to challenge the judgment of this honourable Tribunal in Supreme Court of Pakistan.

5) It is very astonishing, that passing almost one year the respondents are not willing to either implement the judgment of this honourable Tribunal or showed any status quo/suspension order yet to date, so, applicant have no other efficacious and adequate remedy except to approach this honourable Tribunal and file the instant application for implementation for the judgment of this honourable Tribunal interalia on the following grounds

GROUNDS


- A. That the act of respondent as not obeying the order/judgment of this honourable Tribunal in its true spirit is highly discriminatory and just to deprive the applicant from his legitimate rights.
- B. That such act of respondent is against the 10-A of the constitution as right of due process and fair trial is fundamental right of applicant.
- C. That the respondents submitted comments and tried their best to rebut the stance of applicant/appellant but whenever this honourable Tribunal passed his judgment

mentioned *ibid* then there is no other way for respondents except to implement such judgment in letter in spirit without any artificial break/delay.

- D. That the respondent No.1 have no authority to delay the judgment of this honourable Tribunal on the pretext that "they are challenging the decision in the apex Court" and if such practice on part of respondents was not discouraged then, the dignity/decorum of this honourable Tribunal would be demolished.
- E. That the applicant seeks leave of this honourable court to raise/argue any additional point at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this application the respondents may kindly be directed to implement spirit of the judgment rendered by this honourable Tribunal from the date of its announcement.

Applicant through Counsel


SYED ABDUL HAQ,
Advocate, Supreme Court
03110950959

G

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

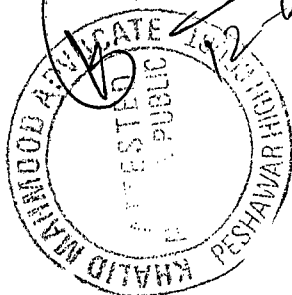
C.M _____ /2022 IN
Service Appeal 1443 of 2019

Usman GhaniApplicant
VERSUS

Director E&SE and othersRespondents.

AFFIDAVIT

I, *Usman Ghani Son of Fazal Ghani Charbagh, tehsil Charbagh District Swat, Retired from District Education Department (Male) as Assistant (BPS-16)*, do hereby solemnly affirm and declare on oath that contents of above application are true and correct to the best of knowledge and belief, and nothing has been kept concealed therein before this honourable tribunal.



[Signature]
DEPONENT

ENIC#15602-21088325
MOB # 0302 8052 826

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR



Service Appeal No. 1443 /2019

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1337

Dated 01-11-2019

Usman Ghani Son of Fazal Ghani Charbagh, tehsil Charbagh District Swat, Retired from District Education Department (Male) as assistant(BPS-16)..... Appellant Swat

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary Education at Peshawar.
- 2) Director Education, Khyber Pakhtunkhwa at Peshawar.
- 3) District Education Officer (Male) District Swat.

.....Respondents

APPEAL UNDER SECTION 4 OF THE GOVT. OF
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ILLEGAL, UNLAWFUL
ACTION WHEREIN THE OFFICIAL RESPONDENTS
HAVE illegally promoted junior colleague of
Petitioner to the post of Superintendent (Bps-
17) dated 31.5.2019,

Filed to-day

Registrar

05/11/19

PRAYER IN APPEAL

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, SWAT
Service Appeal No.1443/2019



Date of Institution ... 01.11.2019
Date of Decision ... 08.12.2021

Usman Ghani son of Fazal Ghani Charbagh, Tehsil Charbagh
District Swat, Retired from District Education Department (Male)
Swat as Assistant (B-16).

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary
Education at Peshawar and two others.

(Respondents)

Syed Abdul Haq,
Advocate

For appellant.

Muhammad Rasheed,
Deputy District Attorney

For respondents.

Rozina Rehman
Atiq ur Rehman Wazir

Member (J)
Member (E)

JUDGMENT

Rozina Rehman, Member(J): Brief facts of the case are that appellant was appointed as Junior Clerk. He was promoted to the post of Senior Clerk and then to the post of Assistant and was placed at Serial No.64 of the tentative seniority list. In the meanwhile, being eligible for the post of Superintendent, the competent authority sought Annual Confidential Reports of the appellant up to the year 2017 with direction to submit the same for the year 2018. As per requirement, ACRs were submitted. Appellant was retired after attaining the age of superannuation and the DPC was delayed. That meeting of the Departmental Promotion Committee was held after the retirement of appellant and resultantly, his junior colleagues were promoted to the

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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post of Superintendent. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

2. We have heard Syed Abdul Haq Advocate learned counsel for appellant and Muhammad Rasheed learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Syed Abdul Haq Advocate, learned counsel for appellant submitted that the act of the respondents by not considering the appellant for promotion is illegal, against law, rules and policy; that the respondents deferred the meeting of Departmental Promotion Committee which was to be formatted before the retirement of appellant which act of the respondents was not justified and that the appellant was entitled to promotion as he had submitted all the required documents and he was in the lead in seniority list. It was further argued that the authority was duty bound to consider the appellant for promotion under the rules but they intentionally delayed the DPC, though there was no fault on part of appellant and lastly, he submitted that junior colleagues of the appellant were promoted after the retirement of the appellant which act of the respondents was not justified as appellant was fit for promotion on a particular date, therefore, is entitled for promotion from due date as per his entitlement.

4. Conversely, learned DDA submitted that the appellant got retired from Government service against the post of Assistant (B-16) after attaining the age of superannuation in the respondent Department, whereas, the date of DPC and impugned notification is much later from the date of his retirement, therefore, he was not promoted to the

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EXAMINER
Hyder Pakhanchwa
Service Tribunal
Peshawar

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post of Superintendent (B-17) by the competent authority and that the act of the respondent Department is within legal parameter and in the interest of justice.

5. From the record it is evident that appellant Usman Ghani was appointed as Junior Clerk on 19.10.1981. He was promoted to the post of Senior Clerk on 30.03.2011 and to the post of Assistant (BS-16). It is also not disputed that he was placed at Serial No.64 of the tentative seniority list of Assistants (B-16). He was eligible for the post of Superintendent and the promotion case of Assistants (B-16) to the post of Superintendent (B-17) was under process, therefore, a request was made to the concerned Directors to submit the ACRs/Non Involvement Certificates (fresh) of the officials through special messenger. Name of the appellant finds mention in the said list at Serial No. 59. Accordingly, the required documents were provided as nothing was brought in this regard by the respondents against the appellant. The next meeting of DPC was held on 31.05.2019, whereas, the appellant got retired from Government service on superannuation w.e.f 03.03.2019. We find that it has not been disputed before this Bench that much before the retirement of the appellant, a working paper was prepared by the Department with regard to his promotion but the matter was delayed without any justifiable reason and in the meanwhile, appellant attained the age of superannuation. He cannot be made to suffer on account of departmental lapse. A notification was produced by the appellant during arguments dated 10th March 2021, wherein, notional promotion was granted to civil servants due to their retirement but case of the appellant was not considered for notional promotion.

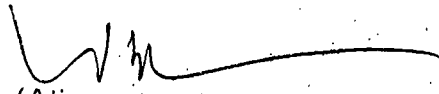
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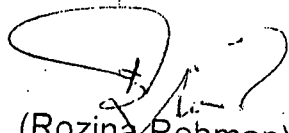
EXAMINER
 MEMBER PAKISTAN
 SERVICE COMMISSION

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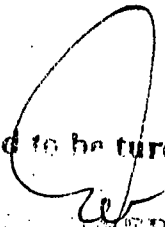
6. Keeping in view the above discussion, instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED.
08.12.2021



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

Certified to be true copy


ED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 29-12-21
No. 2400
26-
4-
30- 
Date of Copy 29-12-21
Date of Delivery of Copy 29-12-21


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OFFICE OF THE DISTRICT EDUCATION OFFICER(M) SWAT.

No. 267

Dated 8/2 2022

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To,

The Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.


Subject: **APPLICATION PROMOTION (NOTIONAL BASIS) TO THE POST OF SUPERINTENDENT BPS-17 IN THE LIGHT OF COURT JUDGMENT**

Memo;

It is stated for your kind information that, application alongwith court Judgment in respect of Mr. Usman Ghani Ex Asstt O/O DEO(M) Swat is requested to want notional promotion to the post of Superintendent BP-17 in the light of Court Judgment is hereby-submitted to your goodself for further necessary action please.

Enclosure.

1. Photo Copy of application.
2. Court Judgment.


Dy; District Education Officer (M)
Swat.

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To

The Secretary

Elementary and Secondary Education

Government of Khyber Pakhtun khwa Peshawar.

Through:- proper Channel

Subject: Application for Promotion (Notional Basis) to the post of superintendent BPs-17 In the light of Court judgment, Date 08/12/2021

Respected Sir,

It is requested that:-

- 1) I was appointed as junior clerk on 19/10/1981 on merit basis by the DEO Male Swat
- 2) Later on I was promoted to the post of senior clerk by the Director elementary and secondary education kpk Peshawar on 30/3/1991
- 3) After I was promoted to the post of Assistant BPS-16 on 28/5/2014 and was placed at serial no 64 in the seniority list of Assistant
- 4) In the mean while being eligible for the post of superintendent BPS 17 , the competent authority sought ACRs for the year 2017-18 ,NON Involvement Certificate vide order dated 30/1/2019,through special Messenger before 8/2/2019, and I was reflected at serial no 59.
- 5) As per requirement, the DEO Male swat submitteu my ACRs For the 2017-18 /NON INVOLMENT CERTIFICATE before 8/2/2019.
- 6) I was retired after attaining the age of superannuation on 03/03/2019,and DPC meeting was Conducted on 17/04/2019 after my retirement and resultantly junior most colleagues were promoted to the post of superintendent BPS -17 on 31/05/2019.
- 7) In this regard I submitted an appeal to your good self on 04/07/2019, but unfortunately no finding has been passed on the departmental appeal.
- 8) Then I submitted service appeal in the service tribunal Peshawar at Camp Court Swat on 1/11/2019.which was decided in my favor on 8/12/2021 .Therefore your good self is requested to issue my promotion order on notional basis From 08/02/2019 per court decision please(copy attached)

You're Obedient

Usman Ghani

Ex -Assistant BPS-16

DEO Male Swat

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Received on
1/3/2022

13

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2022

Government of Khyber Pakhtunkhwa, through Secretary Elementary &
Secondary Education (E&SE) Department Peshawar & Others

Usman Ghani

VERSUS

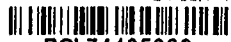
-----PETITIONERS

-----RESPONDENT

NOTICE

To

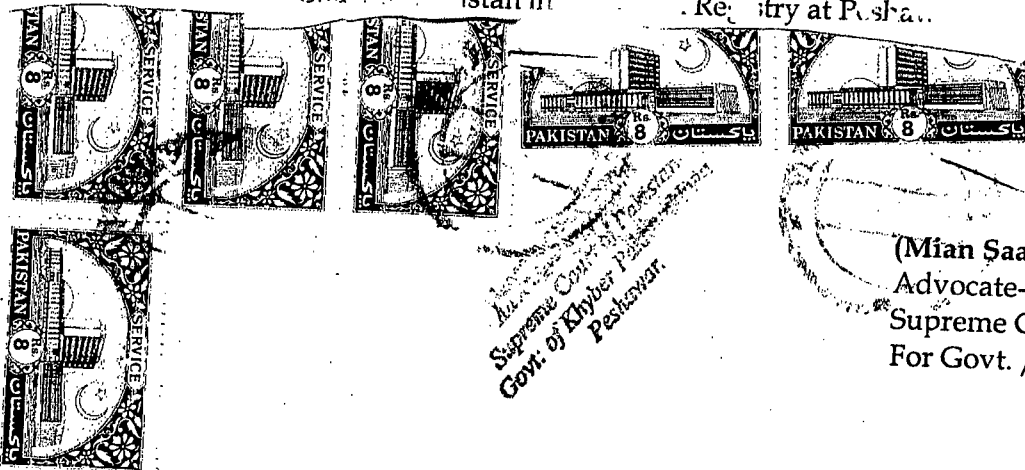
Usman Ghani S/o Fazal Ghani Charbagh, Tehsil Charbagh District
Swat, Retried from District Education Department (Male) Swat.



RGL74465969

CAMP RD PESHAWAR

Please take notice Registered A/D post to the effect that I am
filing CPLA along-with stay application in the above titled case against the
judgment of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar
dated 08/12/2021 in Service Appeal No. 1443/2019 before the Supreme
Court of Pakistan in _____ Registry at Peshawar.



Supreme Court of Pakistan
Govt. of Khyber Pakhtunkhwa
Peshawar

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners

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SYED ABDUL HAQ
ADVOCATE, SUPREME COURT

Mobile : 0311-0950959

Email : syedabdulhaq@gmail.com

Address: Swat Shopping Mall, Opp:
Peshawar High Court Mingora Bench,
Swat.

14

To,

Director E&SE Department,
Khyber Pakhtunkhwa at Peshawar.

Memo

I am filing an application in Service tribunal against non-implementation of judgment dated 08.12.2021 passed in favour of Usman Ghani Son of Fazal Ghani Charbagh, tehsil Charbagh District Swat, Retired from District Education Department (Male) as Assistant (BPS-16). (Copy of the application is sent herewith for your information).



SYED ABDUL HAQ
Advocate Supreme Court

(15)

BEFORE HON'BLE SERVICE TRIBUNAL KPK of Sued

WAKALAT NAMA

Case No. CM of 2022 In SA 1443 of 2019

CASE TITLE

Usman Ghani

VERSUS

Director Eg SE and others

1. Petitioner, do hereby appoint SYED ABDUL HAQ Advocate, Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct prosecution or defence of the said case at all its stages.
3. To receive payment of and issue receipts for, all money that may be or become due and payable to us during the course of proceedings.
4. To do any act necessary or ancillary to the above acts, deed and things.
5. To appoint any other counsel to do any/all of the acts, deeds and things.
6. I/We shall appear in the court/tribunal on every date of hearing for assistance and if due to my/our non-appearance, any adverse judgment/order/decree is passed, they will not be held responsible.

In witness whereof I/We have signed this Wakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this, 12 / 09 / 2022.

Usman Ghani
Signature of Executant

Attested & Accepted by:

SYED ABDUL HAQ
Advocate, Supreme Court of Pakistan
Cell No. 0311-0950959