


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 588/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.10.2022	<p style="text-align: center;">The execution petition of Mr. Zainullah submitted today by Syed Roman Ali Shah 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  REGISTRAR</p>

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWAPESHAWAR

Execution Petition No. 588 /2022
In
Service Appeal No. 840 of 2018

AA 9

Zainullah Sub inspector (R) CTD Kohat S/o Shah Miran R/o
Zarki Nasrati Tehsil Tahti Nasrati District Karak.
.....**DECREE HOLDER/PETITIONER**

VERSUS

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer,
Kohat Region Kohat.
3. District Police Officer Kohat.
4. Government of Khyber Pakhtunkhwa through
Home secretary, Peshawar

.....**JUDGMENT DEBTOR/RESPONDENT**

PETITION FOR DIRECTING THE
RESPONDENT TO IMPLEMENT THE
JUDGMENT AND ORDER DATED
05/07/2022 OF THIS HONORABLE
TRIBUNAL, IN THE ABOVE NOTED APPEAL.

RESPECTFULLY SHEWETH;

Applicant humbly submits as under;

1. That the above noted appeal has been decided on
05/07/2022, by this honorable tribunal in favor of the
petitioner.

- 2. That the appeal of the petitioner has been accepted and the petitioner has been confirmed in the rank of sub-inspector and subsequently officiating promotion from due date of eligibility with consequential benefits. (COPY OF THE JUDGMENT IS ATTACHED AS ANNEXURE-A)
- 3. That the petitioner has approached time and again to the respondent to implement the judgment of this hon'ble tribunal but the respondent deaf eared. (TCS RECEIPT THROUGH WHICH APPLICATION WAS SENT IS ATTACHED AS ANNEXURE -B)
- 4. That now the petitioner has no other remedy but to approach this Hon'ble tribunal for the implementation of this tribunal order dated 05/07/2022.
- 5. That there is no bar in filing of this petition, and this petition is well within time.

It is therefore most humbly prayed that upon acceptance of this petition, the respondents may please be directed to implement the order and judgment of this Hon,ble tribunal Dated 05/07/2022, and to punish the respondents for defiance of this Hon'ble tribunal order dated 05/07/2022.

Zain Ullah
Petitioner

Through

Syed Roman Shah
SYED ROMAN SHAH
Advocate High Court

AFFIDIVIT

I Zain Ullah S/o Shah Miran R/o Zarki Nastrati Tehsil Takhti Nasrati District Karak, do hereby solemnly affirm and declare on oath that the contents of the above **petition** is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable tribunal.

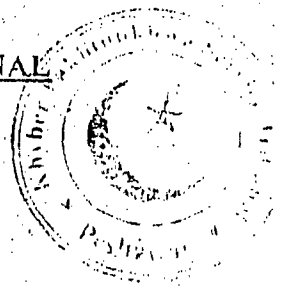
Zain Ullah
DEPONENT

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Annex-A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 840/2018



BEFORE: SALAH-UD-DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Zainullah Sub Inspector (r) CTD Kohat S/o Shah Miran R/o Zarki Nasrati
Tehsil Tahti Nasrati District Kohat..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Home Secretary Peshawar
2. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer Kohat, Kohat Cantt.
4. District Police Officer Kohat, Near Police Line Kohat City
..... (Respondents)

Present:

MR. SHAHID QAYUM KHATTAK,
Advocate, --- For Appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General --- For respondents.

Date of Institution ... 28.06.2018
Date of hearing ... 04.07.2022
Date of Decision ... 05.07.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted invoking Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "on acceptance of the service appeal, the respondent may please be directed to act in the matter in accordance to law and grant promotion to petitioner in the next rank i.e. Inspector by first confirming him as Sub-Inspector in the larger interest of justice with further request that all back benefits of the rank of Inspector may please be granted to him from the date of his eligibility to the post."

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02. Brief facts of the case are that the appellant was initially appointed as Constable in 1975 who got step by step promotion after qualifying the requisite courses and lastly promoted to the rank of officiating Sub Inspector on 01.01.2010. The appellant while posted as officiating Sub Inspector investigation Branch CTD Kohat Region retired from service on 19.04.2017 on attaining the age of superannuation. The appellant's confirmation as Sub Inspector was deferred by the Departmental Promotion Committee on the ground of non completion of the mandatory period. The appellant claims that he was eligible for confirmation as Sub Inspector before retirement as he had undergone the mandatory courses and completed mandatory period for such confirmation. He submitted departmental appeal which was not decided. The appellant sought remedy through writ petition No. 1574-P/2017 which was disposed of on the ground of jurisdiction under Article 212 of the constitution with further direction to respondent No. 2 to decide departmental appeal of the petitioner as early as possible vide judgement of the Honourable Peshawar High Court in his Writ Petition on 21.03.2018. The department did not decide his departmental appeal even after direction of the Hon'ble Peshawar High Court whereafter he submitted the instant service appeal on 28.06.2018.

03. On admission of the appeal, the respondents were issued notices to submit reply/Parawise comments. They submitted reply/Parawise comments denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant as well as learned Additional Advocate General for the respondents and gone through the record with their assistance.

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Peshawar

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04. Learned counsel for the appellant, at the outset of his arguments, contended that the appellant was serving as officiating Sub Inspector when meeting of the Departmental Promotion Committee was held on 10.03.2016 and the appellant was deferred for confirmation as Sub Inspector on account of non completion of the mandatory period. The appellant however, completed the mandatory period of 2 years as officiating Sub Inspector when posted in investigation branch CTD Kohat Region w.e.f. 22.12.2014 to 12.04.2017 and as such he was eligible to have been confirmed as Sub Inspector and placing of his name in list "F". It was further argued that his two colleagues namely Shoukat Saleem and Aqleem Khan who were confirmed as Sub Inspector in Departmental Promotion Committee Meeting dated 10.03.2016, were subsequently promoted as officiating Inspector vide Notification dated 25.11.2016 but the due rights of the appellant were refused on the ground that he had not completed the mandatory period. It was vehemently contended that the appellant completed the mandatory period on 22.12.2016 and as such he was eligible to have been first confirmed as Sub Inspector and then placing his name in list "F" for further promotion as officiating Inspector as per standing order No. 21/2014 amended on 05.11.2014. To strengthen his arguments, he relied on 2016 SCMR 1254. The appellant was not even considered for promotion on the specific direction of Hon'ble Peshawar High Court that departmental appeal of the appellant be decided as early as possible. The appellant was not treated in accordance with law, particularly Rule 13.10 (2) of Police Rules 1934 and Clause 8 of the standing order No. 21/2014. His legal rights guaranteed under Article 4 and 25 of the constitution have been violated. He, therefore, requested that the appellant may be granted his due rights of

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confirmation as Sub Inspector and subsequent promotion as officiating Inspector from due date.

05. Learned Assistant Advocate General, on the other hand, controverted arguments of the learned counsel for appellant and contended that the appellant did not fulfill the requisite criteria for confirmation to the rank of Sub Inspector, therefore, he was deferred for confirmation under amended Rule 13.10 (2). Since he had not completed the mandatory tenure of posting and the mandatory courses as required for confirmation and further promotion to the next high rank at the time of meeting of Departmental Promotion Committee held on 10.03.2016 under the standing order No. 3/2015, therefore, he was not eligible for confirmation as Sub Inspector and further promotion as officiating Inspector. So far the question regarding the promotion of officials mentioned by the appellant in his appeal is concerned, they had already been confirmed in the rank of Sub Inspectors and at the time of their retirement from service were included in list "F", therefore, they were promoted as officiating Inspectors. The appellant had rightly been retired from service as Sub Inspector on attaining the age of superannuation on 19.04.2017. The appeal being devoid of merit/facts might graciously be dismissed, he concluded.

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06. Perusal of the record revealed that the appellant was deferred by the Departmental Promotion Committee in its meeting dated 10.03.2016 on the sole ground that he had not completed mandatory period. The appellant remained posted as officiating Sub Inspector Investigation Branch CTD Kohat Region w.e.f. 22.12.2014 to 12.04.2017 and attained the age of superannuation on 19.04.2017. It is not disputed that the appellant had not completed the mandatory period at the time of DPC meeting held on

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10.03.2016 but the question is that when the mandatory period was subsequently completed on 22.12.2016, meeting of the Departmental Promotion Committee was either not convened or inadvertently left name of the appellant to be considered for confirmation as Sub Inspector and to be placed in list "F"! His batch mates i.e. Shoukat Saleem and Aqleem Khan who were officiating Sub Inspectors and approved to be confirmed as Sub Inspector "subject to completion of courses", in the same Department Promotion Committee on 10.03.2016, were subsequently recommended as officiating Inspectors by the Departmental Promotion Committee on 15.11.2016 and notified as such on 25.11.016. It is also a matter of record that under circular bearing No. 664-70/CPB dated 09.05.2016 the cases of confirmed Sub Inspector who were due for retirement within next three (03) months, were included in list "F". Had meeting of the Departmental Promotion Committee been held and considered the mandatory period undergone by the appellant which was actually completed on 22.12.2016, he would have been confirmed as Sub Inspector and his name included in list "F" for promotion as officiating Inspector. The deficiency on account of mandatory period as was the cause of deferment on 10.03.2016 remained no longer valid on 22.12.2016, when he completed the mandatory period for confirmation as Sub Inspector. This was in no way attributable reason on part of the appellant but the department at large. It is also reflected on the record that the appellant beside departmental appeal before his retirement, had been requesting for his rights vide applications dated 05.03.2017, 30.03.2017, 11.04.2017 and even after his retirement vide representations dated 05.06.2018, 09.06.2018 and 26.06.2018 but to no avail. In the circumstances, the department was obligated to have submitted his case for

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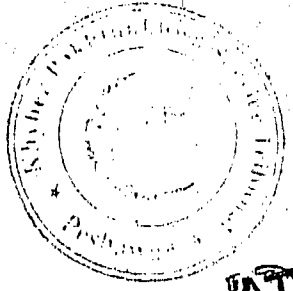
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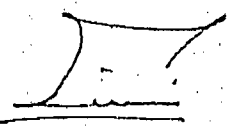
proforma promotion to have been considered by the Departmental Promotion Committee. Reliance is placed on 2016 SCMR 1254, 2016 SCMR 1784, 2016 PLC (C.S) 408 and 2018 PLC (C.S) Note 170.


07. As a sequel to the above, we are constrained to allow the instant service appeal as prayed for, with the direction to the respondents to place the case of appellant to the Departmental Promotion Committee to be considered for proforma confirmation as Sub Inspector and subsequently officiating Inspector from due date of eligibility with consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

08. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 05th of July, 2022.

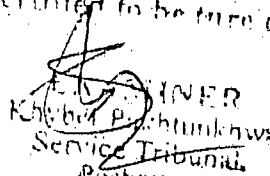


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(SALAH-UD-DIN)
MEMBER (J)


(MIAN MUHAMMAD)
MEMBER (E)

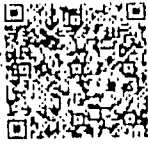
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To
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Phone: 03333428855
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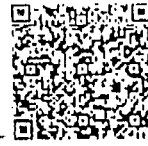
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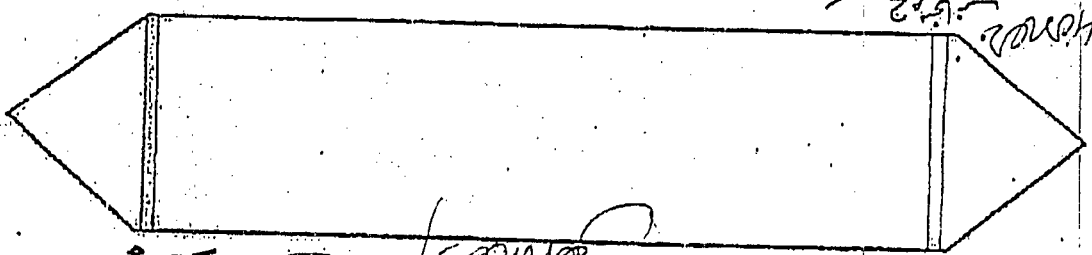
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