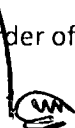



Form- A

## FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 1456 /2022 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/10/2022	<p>The appeal of Mr. Rafiullah Khan presented today by Mr. Hafeezullah Afridi Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and her counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR </p>

**BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR**  
**Service Appeal No. 1156/2022**

Engr. Rafiullah Khan

.....Appellant

**Versus**

Secretary Agriculture Dept & Others

.....Respondent(s)

**INDEX**

Sr No	Particulars	Page No
1.	Service Appeal with Affidavit	1-6
2.	Memo of Address of Parties	7
3.	Copy of the notification dated 13.04.2022 and 04.02.2022 is annexed as Annexure "A" and "A-1"	8-9
4.	Copy of the order dated 22.09.2020 in W.P. No. 2150-P/2020 is annexed as Annexure "B"	10-12
5.	Copy of the departmental appeal dated 28.06.2022 is annexed as Annexure "C"	13
6.	Vakalatnama	14

*Rafiq*  
**Appellant**

**Through**

*Hafeez Ullah Afridi*  
**Hafeez Ullah Afridi**  
 Advocate

**Contact # 0333-9058458**

**BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR**

Service Appeal No. 1456/2022

Engr. Rafiullah Khan Ex-Director Planning - BPS-19,  
Directorate of Agriculture Engineering, Khyber  
Pakhtunkhwa

**...Appellant**

**Versus**

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar
2. The Secretary Agriculture, Government of Khyber Pakhtunkhwa, Agriculture Livestock Fisheries & Cooperative Department

**...Respondent(s)**

**APPEAL UNDER SECTION 4 OF THE KP  
SERVICE TRIBUNAL ACT, 1974 FOR  
CONSIDERATION/REGULARIZATION OF  
SERVICE AS DIRECTOR W.E.F. 22.09.2020  
OR FROM THE DATE WHEN THE OFFICE  
STOOD VACANT; FOR THE PURPOSE OF  
ANCILLARY-CUM-BACK BENEFITS**

**Respectfully Sheweth,**

1. That the Constitution of Islamic Republic of Pakistan aims at protecting civil servants in order to ensure smooth running of affairs of the Government and Institutions so as to benefit the public citizenry.
2. That the Constitution of Islamic Republic of Pakistan equally be-shields civil servants from being treated otherwise than in accordance with law.

**In Sheikh Riaz-ul-Haq's Case<sup>1</sup>, it was held that,**  
*"Admittedly, civil servants being citizens of Pakistan have fundamental rights including the right to access to justice as envisaged under Article 9 of the Constitution".*

**ON FACTS**

3. That the appellant was serving as Director Planning BPS-19, in the Directorate of Agriculture till his superannuation on 09.03.2022. **(Copy of the notification dated 13.04.2022 and 04.02.2022 is annexed as Annexure "A" and "A-1")**
4. That it is important to note that; the promotion of the appellant was due, since long and for giving effect to the same; the appellant succeeded in obtaining relief from the Hon'ble Court to the extent of filing-up of vacant post of Director Agriculture vide order dated 22.09.2022. **(Copy of the order dated 22.09.2020 in W.P. No. 2150-P/2020 is annexed as Annexure "B")**
5. That the appellant performed his duty to the best of his abilities, determination and perseverance and that too, to the entire satisfaction of the competent authority right from the date of inception with impeccable service record even than has to seek interference of the Hon'ble Court for ancillary-cum-back benefits w.e.f. 22.09.2020 or from the date when the office stood vacant.

**In Suo Moto Case No. 19 of 2016<sup>2</sup>, it was held that,**  
*"Good governance was not a favour to be bestowed on the people; it was their right".*

<sup>1</sup> PLD 2013 SC 501

<sup>2</sup> 2017 SCMR 683

6. That having left with no other option at the relevant time but to prefer departmental appeal dated 28.06.2022 which remained unattended till date as such the instant service appeal inter-alia of the following grounds: - **(Copy of the departmental appeal dated 28.06.2022 is annexed as Annexure "C")**

**GROUNDS**

- A.** That non-consideration/regularization of service as Director w.e.f. 22.09.2020 or from the date when the office stood vacant for the purpose of ancillary-cum-back benefits; is uncalled for, against law.
- B.** That carte-blanche exercise of power; abdicates the well-entrenched principle of "structured discretion".
- C.** That the purported omission on the part of respondents to the determinant of appellant itself speaks volumes engraving danger to the notion of good governance, hence requires interference of the Hon'ble Court.

**In Qaiser Iqbal's Case<sup>3</sup>, it was held that, "Rule of Law meant supremacy of law as opposed to arbitrary authority of the Government; said supremacy guaranteed three concepts; first, the absence of arbitrary power; second, equality before law and third the rights of a citizen".**

- D.** That it is cardinal principle of law and justice that what cannot be done directly cannot be done indirectly.<sup>4</sup>

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<sup>3</sup> 2018 PLD Lahore 34

<sup>4</sup> PLD 1993 SC 473 at Page 687

- E.** That public functionary has to reinforce good governance, observe rules strictly and adhere to rule of law in public service<sup>5</sup>.
- F.** That "Expressio Unis Est Exclusio Alterius", commanding that when law requires a thing to be done in particular manner then, it should be done in that manner as anything done in conflict of the command of law shall be unlawful being prohibited.
- G.** That "*Ignorantia juris non excusat*", commanding that ignorance of the law excuses not.
- H.** That further necessary grounds will be raised during the course of arguments.

**PRAYER**

It is therefore humbly prayed that on acceptance of this Service Appeal: -

1. The respondents shall be directed to regularize the service of the appellant as Director BPS-19 w.e.f. 22.09.2020 or from the date when the office stood vacant for the purpose of ancillary-cum-back benefits; with necessary adaptations.
2. Any such order be passed which this Hon'ble Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand.

**Appellant**

**Through**

Hafeez Ullah Afridi  
Advocate

**Contact** 0333-9058458

<sup>5</sup> 2015 SCMR 456; PLD 2013 SC 195

**BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR**  
 Service Appeal No. /2022

Engr. Rafiullah Khan

.....Appellant

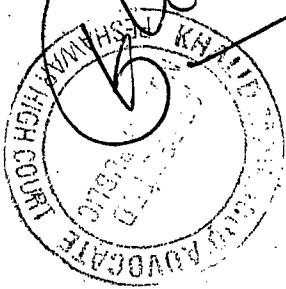
**Versus**

Secretary Agriculture Dept & Others

.....Respondent(s)

**AFFIDAVIT**

I, Engr. Rafiullah Khan Ex-Director Planning - BPS-19, Directorate of Agriculture Engineering, Khyber Pakhtunkhwa, appellant do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge, belief and nothing has been concealed therefrom the Hon'ble Tribunal.



Deponent

**BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR**  
**Service Appeal No. /2022**

Engr. Rafiullah Khan

.....Appellant

**Versus**

Secretary Agriculture Dept & Others

.....Respondent(s)

**MEMO OF ADDRESS OF PARTIES**

**Appellant**

Engr. Rafiullah Khan Ex-Director Planning - BPS-19,  
 Directorate of Agriculture Engineering, Khyber  
 Pakhtunkhwa

**Respondent(s)**

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar
2. The Secretary Agriculture, Government of Khyber Pakhtunkhwa, Agriculture Livestock Fisheries & Cooperative Department

**Appellant**

**Through**

Hafeez Ullah (Attorney)  
 Advocate

**Contact # 0333-9058458**





(8) *Amir A*

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK FISHERIES & COOPERATIVE  
DEPARTMENT**

Dated Peshawar, the 13<sup>th</sup> April, 2022

**NOTIFICATION**

**NO. SOE (AD) 20-103/81/LPR/AE/22: 152** In terms of Rule-20 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and instructions issued from time to time, sanction is hereby accorded to encashment of leave preparatory to retirement, equal to 365 days in favour of Engr. Rafiullah, Ex-Director Planning (BS-19), O/O Director Agricultural Engineer Khyber Pakhtunkhwa Peshawar, w.e.f 10.03.2021 to 09.03.2022 (A.N).

02. In pursuance of Section (13) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, Engr. Rafiullah, Ex-Director Planning (BS-19), O/O Director Agricultural Engineer Khyber Pakhtunkhwa Peshawar, shall stand retired from Government Service with effect from 09.03.2022 (A.N) on attaining sixtieth (60<sup>th</sup>) year of age, as his date of birth is 10.03.1962.

Sd/-  
**SECRETARY AGRICULTURE**

**Endst. of Even No. & Date.**

Copy forwarded for information and necessary action to the: -

- 1) The Accountant General, Khyber Pakhtunkhwa Peshawar.
- 2) The Director, Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar w/r to his letter No.5371/DAE/Estt 1/458 dated 06.04.2022.
- 3) P.S to Secretary, Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
- 4) P.A to Deputy Secretary (Admn.), Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
- 5) Officer concerned.
- 6) Master file

**ATTACHED**

*[Signature]*  
**SECTION OFFICER-ESTT:  
AGRICULTURE DEPARTMENT**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK FISHERIES &  
COOPERATIVE DEPARTMENT

Dated Peshawar, the 4<sup>th</sup> February, 2022

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Annexure A-2

**NOTIFICATION**

**NO. SOE(AD)3(3)Posting Transfer/AE/21: /177** Consequent upon the Promotion of Engr. Rafiullah, Deputy Director Planning (BS-18) to the post of (BS-19) vide this Department's Notification No. SOE(AD)V-7/PSB/AE/21/29 dated 12<sup>th</sup> January, 2022, the Competent Authority is pleased to post him as Director Planning (BS-19), Directorate of Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar in the best interest of public service with immediate effect.

02. The officer on his promotion is authorized to actualize his promotion against the existing post.

SD/-  
SECRETARY AGRICULTURE

**Endst. of Even No. & Date:**

Copy forwarded for information and necessary action to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Agricultural Engineering, Khyber Pakhtunkhwa, Peshawar.
3. P.S to Minister for Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
4. P.S to Secretary Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
5. P.A to Deputy Secretary (Admn), Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
6. Officer concerned/Personal File.
7. Master File.

SECTION OFFICER-ESTT:  
AGRICULTURE DEPARTMENT

ATTESTED

10

Annex B

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
JUDICIAL DEPARTMENT

**WP No. 2150-P/2020**

**"Rafi Ullah**  
**Vs.**  
**The Secretary Agriculture Govt. of KPK &**  
**others."**

**JUDGMENT**

Date of hearing. **22.09.2020**

Petitioner (s) by: M/s. Abdul Lateef Afridi & Malik  
Nasruminallah, Advocates.

Respondent (s) by: M/s. Abdul Rahim Jadoon &  
Bilal Ahmad Durrani, Advocates,  
alongwith Mr. Rab Nawaz Khan,  
Addl. AG.

\*\*\*\*\*

**IKRAMULLAH KHAN, J.-** Through the instant  
writ petition, petitioner seeks the following  
relief:-

"On acceptance of the instant writ  
petitioner the posting order/Notification  
dated 18.03.2020, issued by the  
respondent No.1 whereby the respondent  
No.4 was authorized to hold the look-  
after/additional charge of the vacant post  
of Director, Agriculture Engineering  
Khyber Pakhtunkhwa, Peshawar ((BPS-19)  
may kindly be declared as illegal, void  
against the rule regulations and policy  
and as such the same may graciously be  
set aside.

Further the respondents No.1 & 2 may  
please be directed to withdraw/ cancel the  
posting order of respondent No.4 dated  
18.03.2020, and to restore the order of  
petitioner to look-after/additional charge  
of the post of Director, Agriculture  
Engineering Khyber Pakhtunkhwa  
Peshawar (BS-19) as per rules, regulations

**ATTESTED**

**EXAMINER**  
**Peshawar High Court**

and policy, being senior most officer of the department.

It is further prayed that respondents No.1-3, may please be directed to issue the promotion order of the petitioner to BS-19 as per rules, regulations and policy, being senior most officer of the department and any other orders deem proper may also be passed in the matter."

2. In essence, on retirement of Director Agriculture, Engineering Department of Government of Khyber Pakhtunkhwa, the said post fell vacant. Petitioner was authorized and permitted to hold look-after charge of the vacant post vide order dated 18.03.2020, however, on the even date the same order was withdrawn and respondent No.4, was assigned the look-after charge. Hence, the instance writ petition.

3. We have heard learned counsel for the parties in light of facts on record and law on the subject.

4. As, there is no concept of look after charge, in the services laws, for indefinite period, while in state of contingencies, assigning of look after charge, could not give cause of action, even to the most senior official, although, may be expected to be promoted, as temporarily

**ATTESTED**

**EXAMINER**  
Peshawar High Court

(12)

stopgap arrangement on a post, shall not deprive, any other deserving candidate from his right of promotion, if the post is meant for promotion. Respondents have denied therefrom issuance of any order dated 18.03.2020 in favour of petitioner, which is termed as fake and bogus.

5. This Court could not intervene, in such factual controversy, while writ jurisdiction could only be invoked, if the established right of a person is infringed. No any right of petitioner is taken away by the impugned look-after order, in favour of respondent No.4, therefore, this petition being devoid of merit is disposed of in term that respondents shall fill up the vacant post on regular basis, in accordance with law and rules on the subject, within 60 days positively.

**Announced.**  
**22.09.2020**

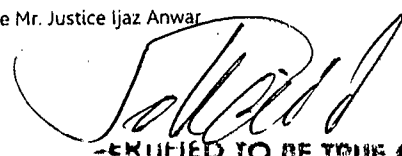
  
**JUDGE**

  
**JUDGE**

(DB) Hon'ble Mr. Justice Ikramullah Khan & Hon'ble Mr. Justice Ijaz Anwar

\*Shahid.SSS\*

No. 10576  
Date of Presentation of Application 01/10/2020  
No of Pages 109  
Copying fee.....  
Total 00  
Date of Preparation of Copy 21/10/2020  
Date of Delivery of Copy 21/10/2020  
Received By Taryyab

  
CERTIFIED TO BE TRUE COPY  
Examiner  
Sindh High Court, Multan  
Authorized Under Article 87 of  
the Qanun-e-Shahadat Order 1984  
**21 OCT 2020**

Subject:

Application for Payment of Liabilities/Back Benefits in respect of  
Engr. Rafiullah Khan, Director (Planning) (BS-19) (Retired now),  
Directorate of Agriculture Engineering, Khyber Pakhtunkhwa.

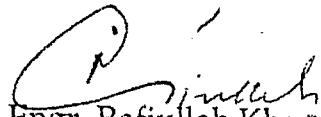
Dear Sir,

Most respectfully it is stated that I filed Writ Petition No. 2150-P/2020 in Peshawar High Court Peshawar. The court vide its judgment dated 22-09-2020 ordered to fill up the vacant post of Director (BS-19), Agriculture Engineer, Khyber Pakhtunkhwa on regular basis in accordance with law and rules within sixty (60) days positively. But, the same was not done, therefore, application for Contempt of Court (COC) was filed in the Peshawar High Court Peshawar bearing COC No. 262-P/2021. The COC was decided on 14-10-2021 with the directions to the respondents to live up to their commitment and implement the order of the court in letter and spirit in the next meeting of PSB to be held in second week of December, 2021.

2. I was promoted to Grade-19 in January, 2022 in light of COC decision dated 14-10-2021. However, the original court decision dated 22-09-2020 was implemented after lapse of about fifteen (15) months (from September, 2020 to December, 2021) which has caused me financial loss without any fault of the undersigned.

3. In view of the above that liabilities/back benefits for the fifteen (15) months may kindly be paid to the undersigned within one (01) months, otherwise, I will be left with no option but to approach the court of law.

Yours faithfully,

  
Engr. Rafiullah Khan,  
Ex-Director (Planning) (BS-19)  
Directorate of Agriculture Engineering,  
Khyber Pakhtunkhwa.

Encl: 2 nos judgments

Secretary Agriculture

Diary No. 5083

Dated 1/7/22

ATTESTED

R 166900  
Ali Azim Afridi  
0333 9555000

14

**VAKALATNAMA**

BEFORE THE Service Tribunal KP Peshawar

Engr. Rafiqullah Khan Plaintiff(s)/Appellant(s)  
Applicant(s)/Petitioner(s)

VERSUS

Secretary Agriculture Dept Defendant(s)/Respondent(s)  
Accused

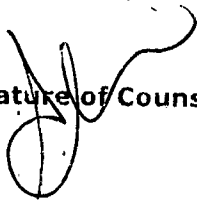
FOR Engr. Rafiqullah Khan

I/We, hereby appoint **Mr. Ali Azim Afridi**  
(Advocate High Court)

1. To appear, act and plead for me/us in the titled case before the Court/Tribunal in which the same maybe tried or heard, and any other proceedings arising therefrom or ancillary therewith and its stages that I personally could do if this instrument had not been executed.
  2. That fee paid, or agreed to the said Counsel is for this Court alone and no part of the fee is refundable. The Counsel shall be entitled to retain costs payable by the opposite side.
  3. I, we, will make arrangement for attending the Court on every hearing to inform my/our Counsel when the case is called. The Counsel shall in no way be responsible for any loss caused to me/us through my/our failure to inform him.
- AND hereby agree:-**
4. That the Counsel shall be entitled to withdraw from the prosecution of the titled case if the whole or any part of the agreed fee remains unpaid.
  5. I/We have read the above terms and conditions and the same have been explained to me/us; and I/We have accepted them in WITNESS WHEREOF; I/We have set my/our hand this \_\_\_ day of \_\_\_\_\_ 20

ACCEPTED

Signature of Counsel



Signature of Client



Email: - aleee\_1@live.com  
Contact # 0333-9555000