



# FORM OF ORDERSHEET

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

Misc. application No. 839/2022

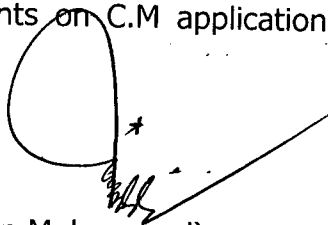
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/07/2022	<p>The Misc. application for execution in execution petition no. 166/2021 submitted by Mohammad Arshad may be entered in the relevant Register. This Petition be put up before Single Bench at Peshawar on <u>02/08/2022</u>. Notices to the petitioner and his counsel be also issued for the date fixed.</p> <div style="text-align: right; margin-top: 20px;">               REGISTRAR           </div> <div style="margin-top: 20px;"> <p><i>Learned member (E) is on leave</i></p> <p><i>Adm. Order is adjourned to 22-8-22</i></p> <p><i>Notice is issued to respondents for submission of inspection report on 22-08-2022 before me.</i></p> <div style="text-align: right; margin-top: 20px;">               Member (E)           </div> </div>

*28-8-22*

22.08.2022

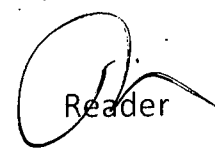
Petitioner in person present.

The petitioner, subsequent to having been order as implemented *and Ensigned* on 07.07.2022, has submitted C.M No. 839/2022 on 28.07.2022 duly entered by the office of Registrar. Since the case was adjourned on the strength of reader's note on previous date and notices to the respondents on C.M of the petitioner could not be issued, Notices to respondents be *therefore,* issued. Adjourned. To come up for reply/comments on C.M application before the S.B on 12.09.2022

  
(Mian Muhammad)  
Member (E)

12.09.2022

The worthy Chairman is on leave, therefore, the case is adjourned to 18.10.2022 for the same.

  
Reader

Muhammad Arshad

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

C. M. No. 839 of 2022.

IN

Execution Petition No. 166/2021

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- **Petitioner.**

**VERSUS**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----

**Respondents.**

PETITION FOR EXECUTION / IMPLEMENTATION OF THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR ORDER / JUDGEMENT DATED 09.06.2021 IN SERVICE APPEAL NO. 1132 OF 2019 REGARDING PAYMENT OF EXECUTIVE ALLOWANCE AND OTHER CONSEQUENTIAL BENEFITS TO THE PETITIONER FROM 19.11.2018 TO 19.03.2019.

Respectfully sheweth that:-

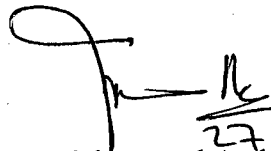
1. The above titled execution petition was fixed for hearing on 07.07.2022.
2. The respondents filed copy of Finance Department notification No. SO(SR-IV)/FD/1-1/Executive Allowance(Mohammad Arshad)/2022 dated 05.07.2022 (**copy enclosed for ready reference**).
3. The filed notification has not fully implemented the judgement/order dated 09.06.2021.

**PRAYER**

It is, therefore, most humbly prayed that the respondents may be directed/compelled to implement this tribunal order/judgement dated 09.06.2021 passed in Service Appeal No. 1132 of 2019 in letter and spirit.

Dated 27.07.2022

**Petitioner**

  
27.07.2022

Mohammad Arshad

Email Address: arshadedo@gmail.com,

Mobile No. 03489745323



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Dated Peshawar the 5<sup>th</sup> July, 2022

**NOTIFICATION**

**NO. SO(SR-IV)/FD/1-1/Executive Allowance (Muhammad Arshad)/2022:** In pursuance of judgment of Services Tribunal Khyber Pakhtunkhwa on 09-06-2021 in execution petition No- 166/22 in service appeal No- 1132/19 case titled Mr. Muhammad Arshad v/s Govt. of Khyber Pakhtunkhwa and upon decision of Provincial Cabinet in its meeting held on 13-06-2022, the Government of Khyber Pakhtunkhwa has been pleased to allow Executive Allowance to the officer i.e. Muhammad Arshad for the period he remained OSD with effect from 19.11.2018 to 19.03.2019.

2- The said benefits shall, however, be specific to the petitioner and shall not be treated/quoted as precedent.

Secretary to Govt. of Khyber Pakhtunkhwa  
Finance Department

**Endst: No & date even**

Copy of the above is forwarded the:-

- 1- The Accountant General, Khyber Pakhtunkhwa.
- 2- Secretary to Government of Khyber Pakhtunkhwa Establishment Department.
- 3- The Director FMIU, Finance Department with the request to upload the same on Finance Department website.
- 4- The Director, Staff Training Institute (STI) E&A Department.
- 5- The Principal Secretary to Chief Minister Khyber Pakhtunkhwa
- 6- PSO to Chief Secretary Khyber Pakhtunkhwa.
- 7- Registrar, Services Tribunal Khyber Pakhtunkhwa Peshawar.
- 1- The Section Officer (Cabinet) Government of Khyber Pakhtunkhwa Establishment & Administration Department with reference to his letter No- SOC (E&AD) 9-74/2022 dated 20<sup>th</sup> June, 2022.
- 8- PS to Secretary to Government of Khyber Pakhtunkhwa Finance Department.
- 9- PS to Special Secretary (A & R), Finance Department.
- 10- PS to Special Secretary (Budget), Finance Department.
- 11- PA to Additional Secretary (Reg) Finance Department.
- 12- PA to Deputy Secretary (Reg-I) Finance Department.
- 13- Master File.

  
(MAQSOOD KHAN)  
SECTION OFFICER (SR. IV)



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)**

Dated Peshawar the 5<sup>th</sup> July, 2022

**NOTIFICATION**

**NO. SO(SR-IV)/FD/1-1/Executive Allowance (Muhammad Arshad)/2022:** In pursuance of judgment of Services Tribunal Khyber Pakhtunkhwa on 09-06-2021 in execution petition No- 166/22 in service appeal No- 1132/19 case titled Mr. Muhammad Arshad v/s Govt. of Khyber Pakhtunkhwa and upon decision of Provincial Cabinet in its meeting held on 13-06-2022, the Government of Khyber Pakhtunkhwa has been pleased to allow Executive Allowance to the officer i.e. Muhammad Arshad for the period he remained OSD with effect from 19.11.2018 to 19.03.2019.

2- The said benefits shall, however, be specific to the petitioner and shall not be treated/quoted as precedent.

**Secretary to Govt. of Khyber Pakhtunkhwa  
Finance Department**

**Endst: No & date even**

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- 4- The Director, Staff Training Institute (STI) E&A Department.
- 5- The Principal Secretary to Chief Minister Khyber Pakhtunkhwa
- 6- PSO to Chief Secretary Khyber Pakhtunkhwa.
- 7- Registrar, Services Tribunal Khyber Pakhtunkhwa Peshawar.
- 1- The Section Officer (Cabinet) Government of Khyber Pakhtunkhwa Establishment & Administration Department with reference to his letter No- SOC (E&AD) 9-74/2022 dated 20<sup>th</sup> June, 2022.
- 8- PS to Secretary to Government of Khyber Pakhtunkhwa Finance Department.
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- 11- PA to Additional Secretary (Reg) Finance Department.
- 12- PA to Deputy Secretary (Reg-I) Finance Department.
- 13- Master File.

  
**(MAQSOOD KHAN)  
SECTION OFFICER (SR. IV)**

7<sup>th</sup> July, 2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Naseeb Khan, SO for respondents present.

Learned AAG produced copy of notification No. SO(SR-IV)/FD/1-1/Eecutive Allowance (Muhammad Arshad)/2022 dated 05.07.2022 whereby in compliance of the judgment of the Tribunal, the grievance of the petitioner has been redressed. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

*Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 07<sup>th</sup> day of July, 2022.*

  
(Kalim Arshad Khan)  
Chairman

22<sup>th</sup> April, 2022

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Naseeb Khan, S.O for the respondents present.


Implementation report has not been submitted. Representative of the respondents seeks adjournment. Last opportunity is granted to the respondents subject to cost of Rs. 5000/- for submission of implementation report on the date fixed. To come up for implementation report/cost on 03.06.2022 before S.B.

  
Chairman

3<sup>rd</sup> June, 2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Sultan Shah, Superintendant and Mr. Naseeb Khan, SO for the respondents present.

Representative of the respondents produced copy of letter of the Law department alongwith minutes of the Scrutiny Committee regarding the instant execution petition. The proceedings so far taken by the respondents in the shape of the above letter and minutes were not found to be the proper compliance of the orders of the Tribunal but later on respondent No.4 submitted a report at the time when the petitioner had left. The same be placed on file. To come up for further proceedings on 07.07.2022 before the S.B.

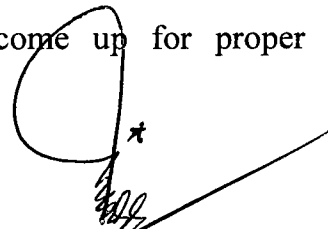
  
(Kalim Arshad Khan)  
Chairman

Execution Petition No. 166/2021  
Muhammad Arshad vs Govt

17.01.2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Sultan Shah Section Officer for respondents present.

The petitioner submitted his objections which are placed on file and copy thereon also handed over to learned Additional Advocate General. It is however, incumbent upon the respondent department and is under obligation to implement judgement of the service Tribunal provisionally/conditionally subject to the outcome of CPLA filed in the august Supreme Court of Pakistan. The department is, therefore, directed to either implement judgement of the service Tribunal dated 09.06.2021 provisionally or obtain stay order of the august Supreme Court of Pakistan against the judgement of service Tribunal. To come up for proper implementation report on 14.02.2022 before S.B.

  
(Mian Muhammad)  
Member (E)

14.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 07.04.2022. for the same as before.

07.04.2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Naseeb Khan, SO for the respondents present. Representative of the respondents states that implementation of the judgment is in process and seeks short adjournment. Request is accepted. To come up for implementation report on 22.04.2022 before S.B. Original record be also requisitioned.

  
Chairman



13.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Naseeb Khan, SO and Mr. Sultan Shah, Assistant for respondents present.

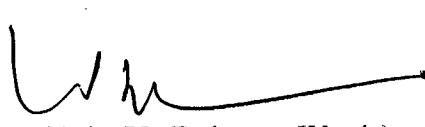
Learned AAG seeks time to submit implementation report on the next date of hearing. Adjourned. To come up for implementation report on 03.01.2022 before S.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

03.01.2022

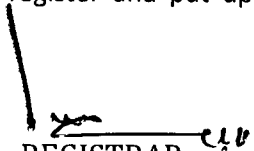


Petitioner in person present. Mr. Kabirullah Khattak, AAG alongwith Mr. Naseeb Khan S.O and Mukaram Khan S.O for respondents present and submitted reply which is placed on file and copy of the same is handed over to the petitioner.

Petitioner requested that time may be granted to him for filing of objections on written reply filed by the respondents. Adjourned. To come up for filing of objections as well as arguments before the S.B on 17.01.2022.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 166 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.09.2021	<p>The execution petition of submitted today by Mr. Muhammad Arshad 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-		<p>This execution petition be put up before S. Bench at Peshawar on <u>15/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	15.10.2021	<p>Petitioner in person present.</p> <p>Notice of the present execution petition be issued to the respondents for submission of implementation report. To come up for implementation report on 13.12.2021 before S.B.</p> <p style="text-align: right;"> (Atiq-Ur-Rehman Wazir) Member (E)</p>

Original

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

Execution Application No. 166 of 2021

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- **Applicant.**

**V E R S U S**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----  
----- **Respondents.**

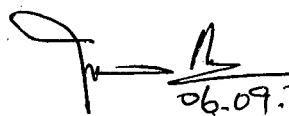
APPLICATION FOR EXECUTION / IMPLEMENTATION OF THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR ORDER / JUDGEMENT DATED 09.06.2021 IN SERVICE APPEAL NO. 1132 OF 2019 REGARDING PAYMENT OF EXECUTIVE ALLOWANCE AND OTHER CONSEQUENTIAL BENEFITS TO THE APPLICANT FROM 19.11.2018 TO 19.03.2019.

**I N D E X**

S. No.	Description of the Document	Annex	Page No.
1	Text of the Application.		1
2	Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.	Annex-I	2-9
3	Application dated 15.07.2021 addressed to respondent No. 3.	Annex-II	10

Dated 06.09.2021

**Applicant**

  
06.09.2021  
Mohammad Arshad

Email Address: arshadedo@gmail.com,  
Mobile No. 03489745323

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR.

Khyber Pakhtunkhwa  
Service Tribunal

Application No. 166 of 2021

Diary No. 1175

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019

Dated 06/09/2021

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- Applicant.

**V E R S U S**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----

----- Respondents.

APPLICATION FOR EXECUTION / IMPLEMENTATION OF THE HONOURABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR ORDER / JUDGEMENT DATED 09.06.2021 IN SERVICE APPEAL NO. 1132 OF 2019 REGARDING PAYMENT OF EXECUTIVE ALLOWANCE AND OTHER CONSEQUENTIAL BENEFITS TO THE APPLICANT FROM 19.11.2018 TO 19.03.2019.

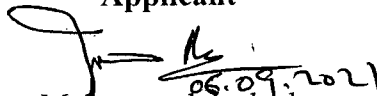
Respectfully sheweth that:-

1. The honourable Khyber Pakhtunkhwa Services Tribunal, Peshawar has decided vide its order / judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019 that the respondents may make payment to the applicant of executive allowance and other consequential benefits from 19.11.2018 to 19.03.2019 (**Annex-I**).
2. The applicant has requested the respondent No. 3 vide application dated 15.07.2021 to implement the order / judgement mentioned above but till filing of instant application, the respondents are reluctant to execute the same (**Annex-II**).

Keeping in view the above mentioned facts, it is, therefore, humbly prayed that the respondents may be directed to make payment to the applicant of executive allowance and other consequential benefits from 19.11.2018 to 19.03.2019.

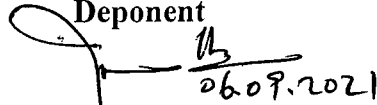
Dated 06.09.2021

**Applicant**

  
Mohammad Arshad

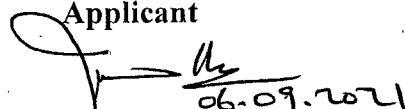
**Affidavit:** It is verified on oath that the contents of the application are true to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

**Deponent**

  
Mohammad Arshad

**Certificate:** It is certified that no other such application has previously been filed on the same matter in this honourable tribunal.

**Applicant**

  
Mohammad Arshad

Email Address: arshadedo@gmail.com,  
Mobile No. 03489745323

~~SECRET~~ (2) *Annex-I*  
BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR.

Service Appeal No. 1132 of 2019

Mohammad Arshad, Additional Secretary, Inter-Provincial Coordination  
Department at Mian Rashid Hussain Shahced Memorial Block, Civil Secretariat,  
Peshawar Cantonment ----- Appellant

VERSUS

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar ----- Respondents.

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 (KHYBER PAKHTUNKHWA ACT NO. I OF 1974) AGAINST THE NON-PAYMENT/STOPPAGE OF EXECUTIVE ALLOWANCE FROM 19.11.2018 TO 19.03.2019, CONTAINED IN THE MONTHLY SALARY STATEMENTS FOR DECEMBER, 2018, JANUARY, FEBRUARY, APRIL, 2019 AND PAY PREPARED ON THE BASIS OF FINANCE DEPARTMENT NOTIFICATION DATED 02.02.2018.

**Prayer:** The part of the condition No. 5 of the Finance Department notification dated 02.02.2018 i.e. "Executive Allowance will not be admissible to OSD posts", being ultra-vires of second proviso to section 10 of the Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), therefore, illegal, void ab-initio, may be expunged from the notification and the Respondents may be directed to make payment to the Appellant of un-paid Executive Allowance for the period from 19.11.2018 to 19.03.2019.

Respectfully sheweth that:-

Facts of the Case

1. The Government of Khyber Pakhtunkhwa, Establishment Department has ordered the posting/transfer of the appellant from Director (Admn. & Finance), Provincial Services Academy, Khyber Pakhtunkhwa to Establishment Department vide notification No. SO(E-I)/E&AD/1-1/2018 dated 13.11.2018 (Annex-I).
2. The appellant has relinquished the charge of the former post on 19.11.2018 (FN) and submitted arrival report on 19.11.2018 (FN) in the Establishment Department (Annex-II).
3. The appellant as per Last Pay Certificate (LPC) issued by the Provincial Services Academy was entitled to draw Executive Allowance at the rate of Rs. 88815/- per month (Annex-III).

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*Filed to-day*  
*[Signature]*  
Registrar  
*6/9/19*

3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1132/2019

Date of Institution ... 06.09.2019  
Date of Decision ... 09.06.2021



Mr. Muhammad Arshad Additional Secretary Inter-provincial Coordination  
Department at Mian Rashid Hussain Shaheed Memorial Block Civil secretariat  
Peshawar Cantonment. ... (Appellant)

**VERSUS**

The Provincial Government through Chief Secretary Education and three  
others. ... (Respondents)

MUHAMMAD ARSHAD  
Appellant ... In Person

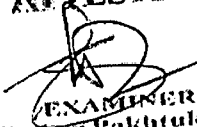
MR. RIAZ AHMAD PAINDAKHEIL  
Assistant Advocate General ... For Respondents

MR. SALAH-UD-DIN ... MEMBER (J)  
MR. ATIQ UR REHMAN WAZIR ... MEMBER (E)

**JUDGMENT: -**

**Mr. ATIQ UR REHMAN WAZIR:** - Brief facts of the case are that the  
appellant while posted as OSD in Establishment Department for almost five  
months was kept deprived of the executive allowance in light of Finance  
Department Notification dated 02-02-2018, which bars executive allowance to  
OSD posts. The appellant challenged the said clause of the notification in a  
departmental appeal dated 15-05-2019, which was processed and forwarded to  
Finance Department for necessary action, but the appellant was not apprised of

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

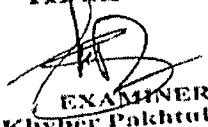
(4)

any decision within the stipulated time period, hence the appellant filed the instant appeal with prayers that part of condition No. 5 of the Finance Department Notification dated 02-02-2018 i.e. "Executive allowance will not be admissible to OSD posts", being ultra-vires of second proviso to Section 10 of the Civil Servant Act, 1973 (Khyber Pakhtunkhwa Act No XVIII of 1973), therefore, illegal, void ab-initio, may be expunged from the notification and the respondents may be directed to make payment to the appellant of un-paid executive allowance for the period from 19-11-2018 to 19-03-2019.

02. Written reply/comments were submitted by respondents.

03. While challenging vires of Finance Department Notification dated 02-02-2018, the appellant Pro se argued the case and contended that this Tribunal has got jurisdiction to entertain the appeal of the appellant and referred to the judgment of Supreme Court of Pakistan reported in 1991 SCMR 1041, which allows a civil servant to file appeal before the Service Tribunal, if a statutory rule or a notification adversely affects the terms and conditions of a civil servant. The appellant contended that since part of condition No 5 of the said notification adversely affect pay/allowances of the appellant and the fact cannot be denied that pay/allowance does come under the definition of terms and conditions of service, therefore, this Tribunal has got jurisdiction to entertain the instant appeal. The appellant further added that such condition of the impugned notification is in total contravention to second proviso of Section 10 of the Civil Servant Act, 1973, which is ultra-vires of the basic law, illegal and void ab-initio. The appellant further argued that where an executive order/notification and clause of an Act are in contradiction to each other, provisions of the Act would prevail. The appellant contended that the OSD post (BPS-19), against which salary of the appellant has been drawn is not the

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(5)

service/cadre post of the appellant, as nowhere OSD post is included in the category of posts mentioned in the Schedule of posts appended to the Khyber Pakhtunkhwa, Provincial Civil Service (Secretariat Group) Rules, 1997, hence he is entitled to receive the executive allowance in view of Section- 10 of the Act *ibid*. On the question of limitation, the appellant accentuated that his appeal is otherwise well in time but he also referred to judgments of Supreme Court of Pakistan in 2006 PLC (CS) 1124 and 1995 PLC (CS) 1026, wherein it has been held that pay and allowances being continuous cause of action are not hit by limitation. The appellant prayed that in view the mentioned facts, part of condition No. 5 of the Finance Department Notification dated 02-02-2018 i.e. *Executive allowance will not be admissible to OSD post*, being ultra-vires of second proviso to Section 10 of the Civil Servant Act, 1973, therefore, illegal, void ab-initio, may be expunged from the notification and the respondents may be directed to make payment of un-paid executive allowance to the appellant for the period from 19-11-2018 to 19-03-2019.

04. Learned Assistant Advocate General appeared on behalf of official respondents contended that the appellant has challenged vires of a notification issued on 02-02-2018, whereas he preferred departmental appeal on 05-09-2019, which is barred by time. That the officer was never posted outside the cadre post, rather posting of an officer as OSD is merely a temporary arrangement and second proviso to Section 10 of the Act is not applicable in his case. Learned Assistant Advocate General further added that the appellant did not perform any duty during the period and such allowance is only admissible to the officers, who are actually working against the post of Schedule-II of PMS Rules, 2007. Learned Assistant Advocate General added that policy making is the domain and discretion of the competent authority,

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar.



6

which cannot be challenged. Reliance was placed on CA No. 827/2020. Learned Assistant Advocate General prayed that the instant appeal being devoid of merit may be dismissed.

05. Arguments heard and record perused.

06. The question of jurisdiction is taken up first for consideration. The appellant is seeking entitlement to the executive allowance and it is well settled that allowance of any type is covered by the term pay, which come under terms and condition of service of a civil servant, regarding which, the Judgment of worthy Supreme Court of Pakistan reported as 1991 SCMR 1041 is very clear. The relevant portion of the same is reproduced as under:

*"From the above-cited cases, it is evident that it has been consistently held interalia by this court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a Notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the inquiry officer. We are inclined to hold that if a statutory rule or notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of sub-section (1) of Section 4 of the Act in order to file an appeal before Service Tribunal".*

07. Furthermore, this Tribunal has already entertained and decided a Service Appeal No. 868/2019 announced by a larger bench of this Tribunal on 14-01-2021, where the appellant had challenged vires of Service Rules, adversely affecting terms and conditions of his service and which was supported by judgments of Supreme Court of Pakistan in 1991 SCMR 1041, PLD 2004 SC 317, 2002 PLC (CS) 94, 2012 PLC (CS)1211, 2018 PLC (CS) 40,

**ATTESTED**

*[Signature]*  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

7

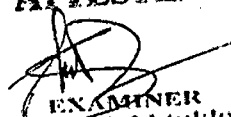
2019 PLC (CS)995 and PLD 1980 SC 153. We are thus sure that this Tribunal is vested with the jurisdiction to entertain the instant appeal.

08. Now the question of limitation is taken up for discussion. The contention of the learned assistant advocate general that departmental appeal of the appellant is barred by time, does not hold any force, as the notification in question was general in nature and not specific for the appellant. When part of condition No. 5 of the said notification started adversely affecting pay/allowances of the appellant, he preferred departmental appeal, which was well within time. Moreover, the question relating to pay and allowances being recurring cause of action, therefore, fresh cause of action accrues to a civil servant on receipt of salary of each month. It is thus held that the departmental appeal as well as the instant service appeal of the appellant are within time.

09. Now the moot question as to whether the appellant is entitled to receive executive allowance, while serving against OSD post, is taken up for discussion. In order to appreciate the controversy properly, it would be advantageous to reproduce the second proviso of Section 10 of Civil Servant Act, 1973, which is as under:

*"Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been so required to serve".*

10. Placed on record is a notification dated 26-06-1997 showing eleven categories of posts in BPS-19 pertaining to the service/cadre of the appellant, but the post of OSD is nowhere mentioned in the schedule of posts. Schedule-II of PMS Rules, 2007 as mentioned by respondents in their comments was

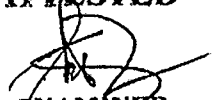
**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

8

also checked, which contains 13 categories of posts in BPS-19, but no mention of the post of OSD. It is thus clear that upon the order of the competent authority, the appellant was required to serve on a post outside his service or cadre, therefore in light of second proviso of the Act *ibid*, the appellant is well within his right to claim the payment of executive allowance, as he would have been entitled to payment of the same, had he been posted on a post within his service or cadre. Contention of the learned Assistant Advocate General to the effect that OSD is a temporary arrangement and the officer did not actually perform any duty, therefore, he is not entitled to executive allowance, is misconceived for the reason that had such contention being true, then the appellant would not have been found entitled to other allowances already included in his pay. Since it was not the choice and willingness of the appellant to be posted as OSD, therefore, he cannot be legally deprived of the payment of executive allowance. In these circumstances, the impugned part of condition No 5 to the effect that executive allowance will not be admissible to OSD posts being in derogation of second proviso to Section 10 of the Civil Servant Act, 1973 is liable to be struck down, particularly for the reason that the Act is having overriding effect on any executive order/notification. It is further clarified that salary of the appellant contains basic pay, qualification pay and almost ten allowances including the executive allowance and depriving a civil servant from such allowance(s) on his posting as OSD is highly discriminatory on the one hand and part of the condition No 5 of the notification i.e. "Executive allowance will not be admissible to OSD posts" is in total violation of the second proviso of Section 10 of the Act *ibid*.

11. In view of the foregoing discussion, the instant appeal is allowed and the portion of the impugned notification to the effect that executive allowance

**ATTESTED**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

To,

The Secretary, Establishment Department,  
Government of Khyber Pakhtunkhwa, Civil Secretariat,  
Peshawar.

10  
Annex-II  
P-10

Subject:

REPRESENTATION UNDER SECTION 22(2) OF THE KHYBER  
PAKHTUNKHWA PROVINCE CIVIL SERVANTS ACT, 1973  
(Khyber Pakhtunkhwa Act No. XVIII of 1973) AGAINST THE NON-  
PAYMENT/STOPPAGE OF EXECUTIVE ALLOWANCE,  
TELEPHONE, NEWSPAPER AND POL BILL AND NON-  
ALLOTMENT OF OFFICIAL VEHICLE FROM 10.07.2020 TILL  
ITS DENIAL/NON-PAYMENT CONTINUES.

I am to refer to my Departmental Representation dated 22.04.2021, received by the department through Diary No. 2983 dated 23.04.2021, on the subject noted above and to enclose herewith a copy of honourable Khyber Pakhtunkhwa Services Tribunal, Peshawar judgement/order dated 09.06.2021, passed in Service Appeal No. 1132/2019, titled Mohammad Arshad-versus-The Government of Khyber Pakhtunkhwa through Chief Secretary & others for compliance/implementation.

2. The honourable Khyber Pakhtunkhwa Services Tribunal has declared the undersigned as entitled to the payment of Executive Allowance for a period from 19.11.2018 to 19.03.2019, the period during which the undersigned remained as OSD (BPS-19), Establishment Department.

3. The legal principle enunciated by the august Supreme Court of Pakistan in Para. 16 (citation C) of its judgement reported as 1996 SCMR 1185, titled, Hameed Akhtar Niazi-versus-The Secretary Establishment Division, Government of Pakistan & others (copy enclosed for ready reference), is reproduced ad verbatim as follows: "We may observe that if the Tribunal or this Court decides a point of law relating to a terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case the dictates of justice and rule of good governance demand that the benefit of the above judgement may be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum."

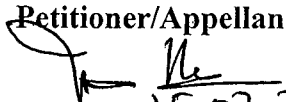
4. The period of 90 days prescribed for decision on the departmental representation/appeal is due to expire during the last ten days of the current month but yet no decision has been made on my representation cited in the subject. In light of the august Supreme Court of Pakistan judgement reported as 1996 SCMR 1185 mentioned above, the undersigned is entitled to get the Executive Allowance and other allied service benefits asked for in the representation referred to above.

Keeping in view the above mentioned facts and law on the subject, it is, therefore, requested to implement the judgement/order dated 09.06.2021 of the Service Tribunal and also move a case for the competent authority to grant me the allowances asked for in the instant representation cited at subject. To compel the undersigned to approach again the honourable Khyber Pakhtunkhwa Services Tribunal, Peshawar will be in violation of the above-cited judgement of the august Supreme Court of Pakistan.

Encl. As Above.

Dated 15.07.2021

Petitioner/Appellant

  
15.07.2021  
Mohammad Arshad, PCS(SG-BPS-20), OSD, Estt. Deptt.  
Mailing Address: House No. 11, Provincial Civil Officers  
Colony, Dabgari Gardens (New), Opposite Habib Medical  
Complex, Dabgari Gardens, Peshawar Cantt.

CNIC No. 15402-9170027-1

Email Address: arshadedo@gmail.com

Mobile No. 0348-9745323

**"B"**

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

No.

Execution Petition 166 of 20 21  
Appeal No. ....

Mohammad Ashad ..... Appellant/Petitioner

Versus

The Court of FKP Chief Secy ..... Respondent

Respondent No. 3 .....

Notice to: —

The Secretary Establishment Deptt  
FKP 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 13/12/21 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 EP 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.....3.15

Day of.....Nov 20 21

(For Implementation)  
Report

[Signature]  
11/11/21  
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.

**"B"**

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

No.

Execution Petition 166 of 20 21  
Appeal No..... of 20 21

Mohamad Arshad  
.....Appellant/Petitioner

the Govt. of KPK Chief Secy:  
.....Respondent

Respondent No..... 4

Notice to: —

The Secretary Finance Deptt.  
KPK 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.....13/12/21.....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.

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E.P ✓

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

315

Given under my hand and the seal of this Court, at Peshawar this.....

Day of.....Now.....20 21

for implementation  
Report  
REGISTRY: FINANCE, KPK  
10-11

  
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.

**"B"**

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

No.

Execution Petition 166  
Appeal No. .... of 20 21  
Mohd Ashad ..... Appellant/Petitioner

The Court: C & KP Chief Secy. .... Respondent

Respondent No. ....

Notice to: —

The Chief Secretary KPK 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..... 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.....

Day of.....20 21

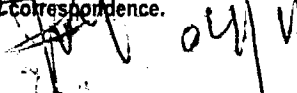
Now 21

(for implementation report)

  
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.



“B”

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

No.

Execution Petition 166 of 20 21  
Appeal No. ....

Mohammad Arshad ..... Appellant/Petitioner

Versus

The Govt. of KPK Chief Secy ..... Respondent

Respondent No. .... 1

Notice to: — The Provincial Govt. of KPK through Chief Secretary 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 13/12/21 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 FP 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 3/11 .....

Day of ..... Nov 20 21

(for implementation Report)

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.



**THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**  
**(ORIGINAL JURISDICTION)**

C P No. ....-P/2021

Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar & others

PETITIONER(S)

VERSUS


Muhammad Arshad

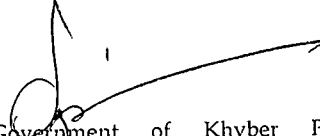
RESPONDENT

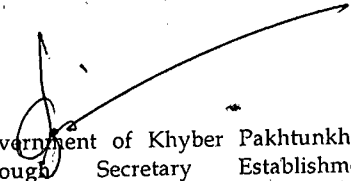
I (we) Petitioner (Govt. of KPK) in the above suit/Appeal/Petition/Reference, do hereby appoint and constitute Mian Saadullah Jandoli, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid appellant [ or plaintiff(s) or Petitioner(s) or Respondent (s) or defendant (s) or opposite party] to commence and prosecute (or to appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid appellant [ or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party]. The aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] agree (s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority


In witness whereof I/we do hereunto set my/our hand (s) this day of

Accepted

  
(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
(for KPK) Advocate General's  
Office KPK High Court Building, Peshawar.  
Date: 09/09/2021  
Supreme Court of Pakistan  
For Govt. of K.P.K.

  
1&2. Government of Khyber Pakhtunkhwa  
through Chief Secretary, Peshawar.  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

  
3. Government of Khyber Pakhtunkhwa  
through Secretary Establishment  
Department, Peshawar.  
**SECRETARY ESTABLISHMENT**  
Establishment & Administration  
Department.

  
4. Government of Khyber Pakhtunkhwa  
through Secretary Finance Department,  
Peshawar.  
**SECRETARY**  
Govt. of Khyber Pakhtunkhwa  
Finance Dept.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

C. Misc. No. \_\_\_\_\_ of 2022.

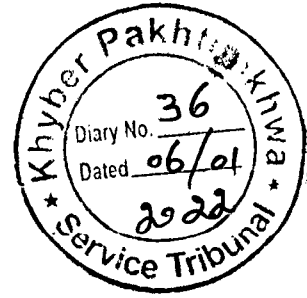
IN

Execution Petition No. 166/2021

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- **Petitioner.**



**V E R S U S**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----

**Respondents.**

PARA-WISE REPLY/REJOINDER ON BEHALF OF THE PETITIONER TO THE REPLY OF RESPONDENTS FILED BY HAND DURING HEARING OF THE EXECUTION PETITION ON 03.01.2022.

Respectfully sheweth that:-

1. Para. No. 1 is incorrect.
2. Para. No. 2 is incorrect.
3. No stay order of the august Supreme Court of Pakistan has been furnished by the respondents. Therefore, execution of the order/judgement of this tribunal cannot be stayed. *The next date of hearing in the case is 17.01.2022.*

**PRAYER**

It is, therefore, most humbly prayed that the respondents may be directed/compelled to implement this tribunal order/judgement dated 09.06.2021 passed in Service Appeal No. 1132 of 2019.

Dated 06.01.2022

**Petitioner**  
*[Signature]*  
06.01.2022  
Mohammad Arshad

**Affidavit:** It is verified on oath that the contents of the petition are true to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

Dated 06.01.2022

**Deponent**  
*[Signature]*  
06.01.2022  
Mohammad Arshad  
Email Address: arshadedo@gmail.com,  
Mobile No. 03489745323

*Put up to the Court with relevant appeal.*

*Deponent.*

*06/01/2022.*

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

C. Misc. No. \_\_\_\_\_ of 2022.

IN

Execution Petition No. 166/2021

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- **Petitioner.**

**V E R S U S**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----

----- **Respondents.**

PARA-WISE REPLY/REJOINDER ON BEHALF OF THE PETITIONER TO THE REPLY OF RESPONDENTS FILED BY HAND DURING HEARING OF THE EXECUTION PETITION ON 03.01.2022.


Respectfully sheweth that:-

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3. No stay order of the august Supreme Court of Pakistan has been furnished by the respondents. Therefore, execution of the order/judgement of this tribunal cannot be stayed. *The next date of hearing in the case is 17.01.2022.*

**PRAYER**

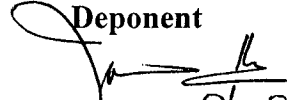
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Dated 06.01.2022

**Petitioner**  
  
06.01.2022  
Mohammad Arshad

**Affidavit:** It is verified on oath that the contents of the petition are true to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

Dated 06.01.2022

**Deponent**  
  
06.01.2022  
Mohammad Arshad  
Email Address: arshadedo@gmail.com,  
Mobile No. 03489745323

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

C. Misc. No. \_\_\_\_\_ of 2022.

IN

Execution Petition No. 166/2021

IN

Order / Judgement dated 09.06.2021 in Service Appeal No. 1132 of 2019.

Mohammad Arshad, House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. Email Address: arshadedo@gmail.com, Mobile No. 03489745323 ----- **Petitioner.**

**V E R S U S**

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----

----- **Respondents.**

PARA-WISE REPLY/REJOINDER ON BEHALF OF THE PETITIONER TO THE REPLY OF RESPONDENTS FILED BY HAND DURING HEARING OF THE EXECUTION PETITION ON 03.01.2022.

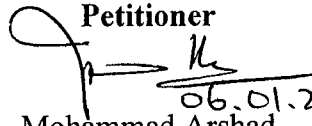
Respectfully sheweth that:-

1. Para. No. 1 is incorrect.
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**PRAYER**

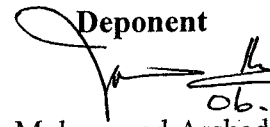
It is, therefore, most humbly prayed that the respondents may be directed/compelled to implement this tribunal order/judgement dated 09.06.2021 passed in Service Appeal No. 1132 of 2019. *The next date of hearing in the case is 17.01.2022.*

Dated 06.01.2022

**Petitioner**  
  
06.01.2022  
Mohammad Arshad

**Affidavit:** It is verified on oath that the contents of the petition are true to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

Dated 06.01.2022

**Deponent**  
  
06.01.2022  
Mohammad Arshad  
Email Address: arshadedo@gmail.com,  
Mobile No. 03489745323



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

MINUTES OF THE SCRUTINY COMMITTEE MEETING.

(AGENDA ITEM NO. 8)

**SUBJECT: EXECUTION PETITION NO. 166/2021 IN SERVICE APPEAL NO. 1132/2019 MUHAMMAD ARSHAD VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT AND OTHERS.**

A meeting of the Scrutiny Committee was held on 30.03.2022 at 11:00 A.M. in the office of Secretary, Law Parliamentary Affairs & Human Rights Department under his Chairmanship to consider the request of the Administrative Department for withdrawal of CPLA filed in the subject case and pending for adjudication before the Supreme Court of Pakistan. Advocate-on-Record (Mr. Mian Saad Ullah Jandoli) represented the Advocate General, Khyber Pakhtunkhwa.

2. The representatives of Finance Department Mr. Amanat Ullah Qureshi, DS (Lit) was also present in the meeting. The Scrutiny Committee permitted for withdrawal of CPLA on the following grounds:

GROUNDS/DISCUSSIONS:

- i. At the very outset of the meeting, the Departmental Representative present in the meeting apprised the Scrutiny Committee that the Administrative Department intended to implement the Judgment dated: 09.06.2021, passed in Service Appeal No. 1132/2019 and intended to withdraw the CPLA pending for adjudication before the Supreme Court of Pakistan in subject Service Appeal.

ADVICE:

3. Hence in view of above, it was decided with consensus by the Scrutiny Committee that permission may be granted to the Administrative Department to withdraw the CPLA in subject case pending for adjudication before the Supreme Court of Pakistan. The Administrative Department was advised to approach to the office of Advocate General, Khyber Pakhtunkhwa for doing the needful.

  
(TAHIR IQBAL KHATTAK)  
SOLICITOR

2-2009/20

07/07/2022  
S/B

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

Execution Petition No.166/21

IN

Service Appeal No.1132/19

Muhammad Arshad

VS

Government of Khyber Pakhtunkhwa

Appellant

Respondent



**Implementation Report**

Respectfully Sheweth: -

1. That the Honorable Khyber Pakhtunkhwa Services Tribunal vide judgment dated 09.06.2021, while accepting Appeal of the Appellant, declared the condition No.5 of the impugned Notification No.FD(SOR-II)8-7/2016-17 dated 02.02.2018 as null and void and held him entitled to the payment of Executive Allowance for the period from 19.11.2018 to 19.03.2019 (four months).
2. Since the Executive Allowance was sanctioned by the Government after approval of the Provincial Cabinet, hence, any alteration/modification or withdrawal of any condition provided in the said Notification will require formal approval of the competent forum.
3. Similarly case for payment of arrears claim of the appellant has already been initiated for approval of the competent forum. Since, the process involves input of multiple departments therefore will resultantly take some time.

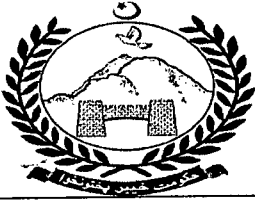
In view of the above explanation, it is humbly requested that the Honorable Tribunal may graciously allow reasonable time enabling the Respondents to implement judgement of this Honorable Tribunal in letter and spirit.

Put up to the worthy chairman  
with relevant execution petition.

Reader

ew  
03/06/2022

Secretary Finance Department  
Respondent No.4



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/8-9/Finance/2022/  
Dated Peshawar the 13/04/2022

To

1. The Advocate General,  
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department.

Subject:

**REQUEST FOR WITHDRAWAL OF CPLA IN CASE TITLED MR. MUHAMMAD ARSHAD SERVICE APPEAL NO.1132/2019 E.P. NO.166/2021 VERSUS GOVT. OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT AND OTHERS**

Dear Sir,

I am directed to refer to Government of Khyber Pakhtunkhwa Finance Department letter No.SO (Lit-I)FD/2-2009/2019 dated 24-03-2022 on the subject noted above and to forward herewith minutes of the Scrutiny Committee meeting held on 30-03-2022 in Law Department (which are self explanatory) for perusal and further necessary action, please.

Yours faithfully,

*N. S. /*

ASSISTANT LAW OFFICER (Lit)

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

Copy is forwarded to:

1. PS to Secretary Law Department Khyber Pakhtunkhwa.
2. PA to Law Officer, Law Department.

ASSISTANT LAW OFFICER (Lit)

*Pls attend of  
LOR for doing  
orderful.*

*AS (R/Litigation)*  
Secy: Finance K/PK  
Dairy No. 7335  
Date 15/4/22



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

MINUTES OF THE SCRUTINY COMMITTEE MEETING.

(AGENDA ITEM NO. 8)

**SUBJECT: EXECUTION PETITION NO. 166/2021 IN SERVICE APPEAL NO. 1132/2019 MUHAMMAD ARSHAD VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT AND OTHERS.**

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(TAHIR IQBAL KHATTAK)  
SOLICITOR



36 "A"

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

No.

E.P. No. 116/21 C.M. No. 839 of 2022  
APPEAL No. .... of 2022

Mohammad Ayshad

Appellant/Petitioner

Versus

The Govt. of KPK through Chief Secy.

RESPONDENT(S)

Respondent No. 3

Notice to Appellant/Petitioner

The Secretary Establishment  
Deptt. KPK Peshawar.


Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 12/9/22 at 9:00 am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

copy of ~~app~~  
C.M is  
Attached

  
Registrar,

Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

  
P.S/Secy E&AD KP  
Diary No. \_\_\_\_\_  
FTS No. \_\_\_\_\_  
Date. \_\_\_\_\_

“A”

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

No.

E.P. No. 116/21 (C.M. No. 839 of 20 22  
APPEAL No.....

Mohammad Arshad

Appellant/Petitioner

Versus

The Govt. of KPK through Chief Secy:

RESPONDENT(S)

Respondent No. 4

Notice to Appellant/Petitioner

The Secretary Finance Deptt.  
KPK Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 12/9/2022 at 9 am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

copy of C.M  
is attached

Registrar,

Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

2/9

**"A"**

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

No.

*E.P. NO. 116/21 C.M. NO. 839 of 2022*  
APPEAL No..... of 2022.

*Mohammad Arshad*

**Appellant/Petitioner**

**Versus**

*The Govt. of KPK through Chief Secy.*

**RESPONDENT(S)**

*Respondent No. 2*

*the Chief Secretary KPK  
Peshawar.*

**Notice to Appellant/Petitioner**

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*copy of CM  
is Attached*

*9/9/22*  
CHIEF SECRETARY  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

**Registrar,**  
**Khyber Pakhtunkhwa Service Tribunal,**  
**Peshawar.**