

20.01.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for implementation of the judgment under execution. Adjourned. To come up for implementation report on 15.03.2022 before the S.B at Camp Court Abbottabad.



(Salah-ud-Din)  
Member (J)  
Camp Court A/Abad

17.05.2022

Learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Syed Naseer Ud Din Shah, Assistant for respondents present.

Learned counsel for the petitioner submits that the petitioner would be satisfied if further direction is given to the respondents to decide the matter earlier remanded to the respondents vide judgment dated 09.07.2019 within 20 days of receipt of this order and in case the petitioner finds himself aggrieved he would adopt further legal course and in case the matter could not be taken up or decided by the respondents within 20 days, the petitioner will be at liberty to seek redressal but subject to limitation etc. Disposed of accordingly. Consign.




*Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal this 17<sup>th</sup> day of May, 2022.*



(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad.

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 219 /2021

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1     | 11.10.2021                | <p>The execution petition of Mr. Mukhtiar Ahmad submitted today by Mr. Muhammad Aslam Tanoli Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p><br/>REGISTRAR</p> |
| 2-    |                           | <p>This execution petition be put up before Touring S. Bench at A.Abad on <u>02/12/21</u>.</p> <p><br/>CHAIRMAN</p>  |
|       | 02.12.2021                | <p>∴ Counsel for the petitioner present. Notices be issued to the respondents for the next date. Case to come up on 20.01.2021 before S.B at camp court, Abbottabad.</p> <p><br/>Chairman<br/>Camp Court, A/Abad</p>   |

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

*Exceptional Petition no. 219/2021*

COC No. ....of 2021

In

Service Appeal No/1605/2013

Mukhtar Ahmed S.S. Government High School Beer District Haripur.

.....Petitioner/Appellant-

**VERSUS**

1. The Chief Secretary KPK Peshawar.
2. The Secretary Education (E&SE) KPK Peshawar.
3. The Director Education (E&SE) KPK Peshawar.
4. The District Education Officer (Male) E&SE *Haripur*

.....CONTEMNORS/RESPONDENTS.

**CONTEMPT PETITION**

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| 3.  | Judgment/Decision dated 09-07-2019 | "B"           | 07-10       |
| 4.  | Wakalatnama                        |               |             |

*Petitioner/Appellant*

Through

*M. Aslam*

(Mohammad Aslam Tanoli)

Advocate High Court

At Haripur.

Dated: 11-10-2021

(1)

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

*Execution Petition no. 219/2021*

COC No. ....of 2021

In

Service Appeal No/1605/2013

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1380

Dated 11/10/2021

Mukhtar Ahmed S.S. Government High School Beer District Haripur.

.....Petitioner

**VERSUS**

1. The Chief Secretary KPK Peshawar.
2. The Secretary Education (E&SE) KPK Peshawar.
3. The Director Education (E&SE) KPK Peshawar.
4. The District Education Officer (Male) E&SE Peshawar

.....CONTEMNORS/RESPONDENTS.

**PETITION FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE**  
**RESPONENTS/ CONTEMNORS FOR NOT IMPLEMENTING THE ORDER/**  
**JUDGMENT DATED 09-07-2019 PASSED BY THIS HONOURABLE TRIBUNAL IN**  
**THE AFORESAID SERVICE APPEAL.**

**PRAYER:**

**IT IS THEREFORE**, very respectfully prayed that on acceptance of instant petition, the contemnors/ respondents be proceeded against in accordance with the law on the subject for not implementing the order/judgment dated 09-07-2019 passed by this Honorable Tribunal, and they further be directed/ordered to implement the order in hand in its true letter and spirit.

Respectfully sheweth;

1. That, aforesaid Service Appeal filed by the petitioner was disposed of by this honorable Tribunal, vide order dated 09-07-2019, with direction "to decide the departmental appeal dated 04-09-2013 of the appellant within 90 days from the date of

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receipt of copy of this judgment in accordance with law with further direction to communicate the same to the appellant and thereafter, if the appellant was aggrieved from the order of departmental authority on his departmental appeal then he will be at liberty to approach this Tribunal for his grievance".

**(Attested copies of Service Appeal and order dated 09-07-2019 are annexed as annexure "A&B").**

2. That the order dated 09-07-2019 was passed in the presence of Mr. Muhammad Bilal Khan, Deputy District Attorney and Mr. Muhammad Shamim, Section Officer for respondents and copy of the same was also duly communicated to them by the office but after the passage of about two (02) years, no step has been taken by the respondents towards the decision of the appeal of the petitioner as directed by this honorable Tribunal vide order dated 09-07-2019.
3. That the matter has been put on the back burner by the respondents by showing defiance to the order dated 09-07-2019.
4. That feeling aggrieved of the willful action/inaction of the respondents, petitioner having no other remedy except to file the present petition inter alia on the following amongst other grounds.

#### **GROUND:**

- A) That contemnors/respondents are legally bound to implement the judgment of this honorable Tribunal, no sooner they get the same, but they badly failed to discharge their constitutional/legal duty by showing defiance towards implementation of order/judgment dated 09-07-2019.

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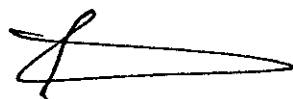
- B) That contemnors/respondents have shown complete defiance to the order of this honorable court by not implementing the same in its true letter and spirit despite lapse of complete 02 (two) years, which act of the respondents have made them liable to be proceeded against in accordance with the law on the subject.
- C) That this honorable court had clearly directed the respondents to implement the order in hand within a period of 90 days from the date of receipt copy of the judgment but they failed to do so without any good legal reason.

**PRAYER:**

It is therefore, very respectfully prayed that on acceptance of this petition the contemnors/ respondents be proceeded against in accordance with the law on the subject for not implementing the order/judgment dated 09-07-2019 passed by this honorable Tribunal, and they further be directed/ ordered to implement the order in hand in its true letter and spirit.

Dated: 11 -10-2021

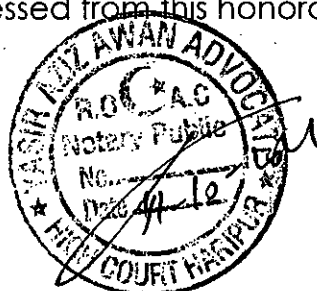
THROUGH

  
PETITIONER  
M. Aslam  
MOHAMMAD ASLAM TANOLI  
ADVOCATE HIGH COURT

**AFFIDAVIT**

I, Mukhtar Ahmed, son of Farid Mohammad resident of House No. 1390, Sector No.1 Khalabat Town Ship (KTS) Tehsil and District Haripur do hereby undertake/ solemnly affirm that the contents of fore-going petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this honorable court.

Dated 11-10-2019



  
Mukhtar Ahmed  
(DEPONENT)

(4)

Annex-A

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.



APPEAL NO. 1605/2013.  
*Neem*

Mukhtar Ahmed, S.S,  
GHSS Beer, Haripur.....Appellant.

**VERSUS**

*1624*  
*05/12/13*

- 1- The Chief Secretary KPK Peshawar.
- 2- The secretary Education (S&SE) KPK Peshawar.
- 3- The Director Education (E&SE) KPK Peshawar.
- 4- The Distt. Education Officer, (male), E&SE, Haripur.
- 5- The Secretary Finance, KPK Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 FOR DIRECTING THE RESPONDENTS TO ADJUST THE APPELLANT AS SUBJECT SPECIALIST W.E.FROM 1.12.2011 WITH ALL PAY AND OTHER SERVICE BENEFITS AND AGAINST NOT TAKING ANY ACTION ON THE APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

**PRAYER:** *That on acceptance of this appeal the respondents may be directed to adjust the appellant as Subject Specialist w.e.from 1.12.2011 with all pay and service benefits as no fault lies on the part of appellant. Any other remedy which this august Tribunal deems proper that may also be awarded in favour of appellant.*

*5/12/13*

R.SHEWETH.

- 1) That the appellant joined the Education Deptt: as trained PTC in the year 1988 and as such the appellant has more than 24 years service at his credit with good record throughout. Copy of the order is attached as Annexure - A.

re-submitted to  
and filed;

*13/12/13*

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

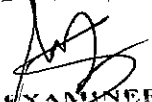
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- 2) That vide order dated. 10.11.1994, the appellant was appointed as SET in PBS-16, after completion of all process by the Public Service Commission. Copy of the order is attached as Annexure – B.
- 3) That being trained and qualified, the appellant was posted/appointed as In-charge Subject Specialist vide order dated. 17.2.2003 at GHSS Beer Haripur. Copy of the order is attached as Annexure – C.
- 4) That the appellant applied for leave w.e.from 1.12.2003 to 31.12.2006 and then 1.1.2007 to 30.11.2011 which was duly approved by then EDO, Haripur. However, after availing leave, the appellant reported his arrival on 26.11.2011. Copies of applications, leave order, and arrival report are attached as Annexure – D, E, F, G.
- 5) That in the mean while, the Education Deptt: regularized many Subject Specialists from 5.1.2005, against which many S.S filed appeal before the august Tribunal and then against that appeal before the Supreme Court of Pakistan. The Hon'able Supreme Court of Pakistan allowed the appeal and ordered that S.S be regularly promoted from 17.2.2003. Thus almost all the colleagues of appellant have stood regularly promoted as S.S from 17.2.2003. Copy of the supreme Court Judgment is attached as Annexure - H
- 6) That since his arrival, the appellant continuously requesting the respondents for adjustment as Subject Specialist but in vain and finally, the appellant submitted his appeal to the respondent No.2 but the same has not been responded so far despite the lapse of statutory period. Hence the present appeal on the following grounds amongst the others. Copy of appeal is attached as Annexure – I.

**GROUND:**

- A- That not adjusting the appellant as S.S from 1.12.2011 and not paying his due salaries to appellant and not taking any action

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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on appeal of appellant are against the law facts and norms of justice, therefore not tenable.

B- That the appellant was on leave w.e.from 1.12.2003 to 30.11.2011 which was in the knowledge of the respondents but despite that the appellant has not been adjusted as S.S while all his colleagues are now regular S.S in pursuant to the Judgment of the Supreme Court of Pakistan.

C- That the appellant is a similarly placed person keeping in view the judgment of the supreme Court of Pakistan, therefore the appellant is also entitled to all benefits of S.S post after reporting his arrival.

D- That the appellant has not been dealt according to the law and rules and the whole action and inaction of the respondents is totally illegal and unlawful.

E- That the appellant has been made to suffer for the faults of others which is not permissible in the eyes of law.

F- That the appellant is still on the strength of the Deptt: is legally entitled to be adjusted as S.S from his date of arrival with all benefits of Subject Specialist post.

G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of appellant maybe accepted as prayed for.

Date of Presentation of Application 06/10/23  
Number of Words 1200 THROUGH:  
Copying Fee 15/-  
Urgent 3/1  
Total 18/-  
Name of Counselor \_\_\_\_\_  
Date of Completion of Copy 06/10/23  
Date of Delivery of Copy 06/10/23

APPELLANT A  
MUKHTAR AHMED.

M. Asif Yousafzai  
M.ASIF YOUSAFZAI  
ADVOCATE.

Certified to be true copy

[Signature]  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(7)

Annex-B

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 1605/2013

Date of institution ... 05.12.2013

Date of judgment ... 09.07.2019



Mukhtar Ahmed, S.S,  
GHSS Beer, Haripur

... (Appellant)

**VERSUS**

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Secretary Education (E&SE) Khyber Pakhtunkhwa Peshawar.
3. The Director Education (E&SE) Khyber Pakhtunkhwa Peshawar.
4. The District Education Officer, (Male), E&SE, Haripur.
5. The Secretary Finance, Khyber Pakhtunkhwa Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR DIRECTING THE RESPONDENTS TO ADJUST THE APPELLANT AS SUBJECT SPECIALIST W.E.F 01.12.2011 WITH ALL PAY AND OTHER SERVICE BENEFITS AND AGAINST NOT TAKING ANY ACTION ON THE APPEAL OF APPELLANT WITH STATUTORY PERIOD OF NINETY DAYS.

Syed Noman Ali Bukhari, Advocate.

.. For appellant.

Mr. Muhammad Bilal Khan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Shamim, Section Officer for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Subject Specialist. The appellant

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

applied for leave with effect from 01.12.2003 to 30.11.2011 which was duly approved from the EDO Haripur. That after availing the extraordinary leave, the appellant reported his arrival on 26.11.2011 but the appellant was not allowed to perform duty therefore, he filed departmental appeal on 04.09.2013 to respondent No. 2 i.e Secretary Education (E&SE) Khyber Pakhtunkhwa Peshawar but the same was not responded within the statutory period of 90 days hence, the present service appeal on 05.12.2013.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Education Department as Subject Specialist and has more than 24 years service in his credit with good record throughout. It was further contended that the appellant applied for leave with effect from 01.12.2003 to 30.11.2011 which was duly approved by the EDO Haripur, however, after availing leave, the appellant reported for his arrival on 26.11.2011 but the appellant was not allowed to perform duty. It was further contended that as per seniority list pertaining to the year 2016 of the Subject Specialists BPS-17, the appellant has been shown at serial no. 35 of the seniority list which as per <sup>his</sup> contention shows that the appellant is in service. It was further contended that the appellant continuously requesting the respondents for adjustment as Subject Specialist but in vain and finally the appellant submitted his departmental appeal to respondent no. 2 but the same has not been responded within statutory period therefore, he filed the present service appeal. It was further contended that neither the appellant has been proceeded <sup>in</sup> departmental proceeding by the respondent-department nor the appellant has been terminated or removed from service therefore, the respondent-department was bound to accept his arrival

*M. Anwar*  
29.7.2019

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



report after expiry of extraordinary leave and adjust the appellant at the post of Subject Specialist therefore, prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant is absent from duty since 2003. It was further contended that the extraordinary leave with effect from 01.12.2003 to 30.11.2011 was not sanctioned by the competent authority and the appellant remained absent from duty without permission of the competent authority. It was further contended that the appellant is still abroad. It was further contended that neither original nor appellate final order has been passed against the appellant therefore, the present service appeal is not maintainable under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant has alleged in service appeal that he had applied for leave with effect from 01.12.2003 to 31.12.2006 and than 01.01.2007 to 30.11.2011 which was duly approved by the than EDO Haripur. However, after availing leave, the appellant reported for his arrival on 26.11.2011 but the respondent-department did not allow the appellant to perform his duty and the appellant continuously requested the respondents for his adjustment as Subject Specialist but in vain and finally the appellant submitted departmental appeal to respondent No. 2 but the same has not been responded within the statutory period therefore, filed the present service appeal. Admittedly, there is neither any original order passed by the competent authority nor any final appellate order has been passed by the appellate authority on the departmental appeal of the appellant therefore, we deem it appropriate to remand the case to departmental authority with the direction to decide the departmental appeal dated 04.09.2013 of the appellant within 90 days from the date of receipt of copy of this judgment in accordance with law with

*M. J. Khan*  
 9.7.2019

**ATTESTED**

*[Signature]*

EXAMINER

Khyber Pakhtunkhwa  
 Service Tribunal

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further direction to communicate the same to the appellant and thereafter, if the appellant was aggrieved from the order of departmental authority on his departmental appeal <sup>m</sup> then he will be at liberty to approach this Tribunal for his grievances. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
09.07.2019

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER  
CAMP COURT ABBOTTABAD

*Hussain Shah*  
(HUSSAIN SHAH)  
MEMBER  
CAMP COURT ABBOTTABAD

Certified to be true copy

*Hussain Shah*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 06/10/27  
Number of Words 1600  
Copying Fee 18/-  
Urgent 3/2  
Total 21/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 06/10/27  
Date of Delivery of Copy 06/10/27

# وکالت نامہ

کوٹ فیس  
قیمت

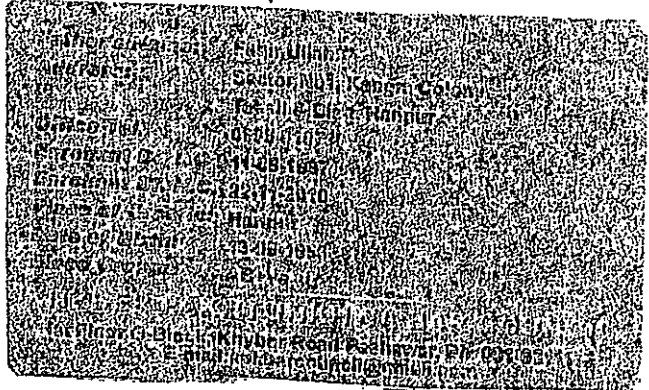
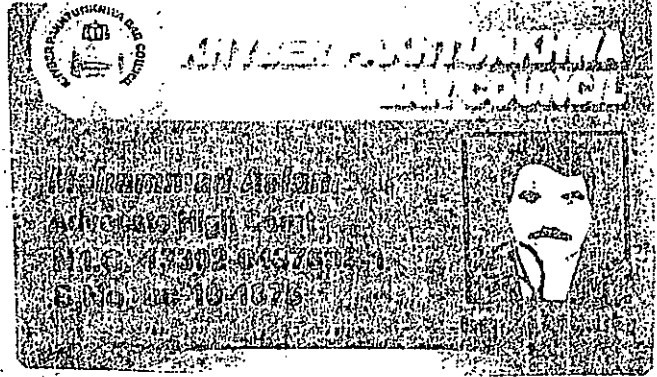
ابعدالت جناب  
 Petitioner / Respondent  
 Petitioner / Respondent  
 دعویٰ یا جرم

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام اس کے کوامادہ  
 ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص  
 رو برو عدالت حاضر ہونا ہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی  
 پیشی پر مظہر حاضر نہ ہوں۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ  
 ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز  
 تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز پکھری کے اوقات  
 کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے  
 بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب  
 موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق  
 کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے  
 کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و  
 برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم اتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو  
 بشرط ادائیگی علیحدہ پیروی مختار نامہ کرینکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر  
 کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب  
 موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ  
 کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ کر ہے کہ سند ہے مضمون  
 مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

Accepted  
 M. A. Adil

مورخ: 11 اکتوبر 2022ء

السید عبدالعزیز



D.F.A

17.05.2022

Learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Syed Naseer Ud Din Shah, Assistant for respondents present.

*the Petitioner*

Learned counsel for the petitioner submits that he would be satisfied if further directions given to the respondents to decide the matter <sup>advised</sup> remanded to the respondents vide judgment dated 09.07.2019 within <sup>20</sup> ~~14~~ <sup>days</sup> days of receipt of this order and in case the petitioner <sup>finds</sup> himself aggrieved he would adopt further legal course. Disposed of accordingly. Consign.

*Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal this 17<sup>th</sup> day of May, 2022.*

*and in case the matter could not be taken up or decided by the respondents*

(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad

*w/i (20) days, the Petitioner will be at liberty to take appeal but subject to addressal from the court etc.*

17.05.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan, Assistant Advocate General for respondents present.

The appellant has challenged the promotion notification No. 888/E-III dated 10.05.2018 which was made on the recommendations of Departmental Promotion Committee in meeting held on 04.05.2018. The recommendations/minutes of the meeting of Departmental Promotion Committee are not before the Tribunal nor in possession of the appellant as well as learned AAG, therefore, being appropriate let the recommendation/minutes of the DPC be placed before the Tribunal within 7 days. To come up for such record as well as arguments before D.B on 18.07.2022 at camp court Abbottabad.

(Fareeha Paul)  
Member(E)

(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad