

13.05 2022

Petitioner with counsel present. Mr. Naseer-ud-din Shah, Assistant Advocate General alongwith Mr. Shahid Iqbal Assistant (Litigation) for the respondents present.

Representative of the respondents produced copy of office order dated 13.05.2022, whereby the petitioner is conditionally reinstated into service subject to issuance of suspension order by august Supreme Court of Pakistan or final outcome of CPLA.

On the other hand petitioner is satisfied. Disposed of accordingly. Consign.

*Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 13<sup>th</sup> day of May, 2022*



**(Kalim Arshad Khan)**  
**Chairman**

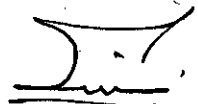
E.P. No. 231/2021  
Muslim Khan vs Govt

10.01.2022

Petitioner in person present. Mr. Hamid Slaeem, Law Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Representative of respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan.

In this view of the matter, in case no order of suspension of the judgment under execution has been passed by august Supreme Court of Pakistan, the respondents are required to pass a conditional order of implementation of the judgment dated 02.09.2021 passed by this Tribunal, which of course will be subject to outcome of the CPLA. To come up for implementation report on 23.02.2022 before S.B.



(Salah-Ud-Din)  
Member (J)

24.02.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 10.05.2022 for the same before D.B.



Reader

10.05.2022

Petitioner present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Learned AAG requested for adjournment in order to submit proper implementation report. Adjourned. To come up for implementation report on 13.05.2022 before S.B.

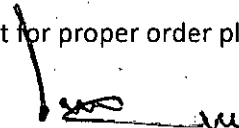

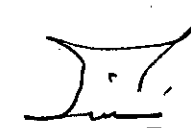


(Rozina Rehman)  
Member (J)

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 231 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2021	<p>The execution petition of Mr. Muslim Khan submitted today by Mr. Noor Muhammadiyah Khattak Advocate 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 on <u>19/11/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	19.11.2021	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 10.01.2022 before the S.B.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J)</p>



## KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

### OFFICE ORDER

In compliance with Implementation Petition 232/2021 in Appeal No. 1376/2019, E.P. No.230/2021 in Appeal No.1374/2019 and E.P. No. 231/2021 in Appeal No.1375/2019 , the following ex-employees of Khyber Pakhtunkhwa Public Service Commission are conditionally reinstated into service subject to issuance of suspension order by August Supreme Court of Pakistan or final outcome of CPLA No. 667-P/2021 (Chairman PSC and Others Versus Taj Wali), No. 665-P/2021 (Chairman PSC and others V/s Zahoor Khan) and No.666-P /2021 (Chairman PSC and Others versus Muslim Khan): -

S#	Name	Designation	Reinstated as
1.	Taj Wali	Driver	Driver
2.	Zahoor Ahmed	Naib Qasid	Naib Qasid
3.	Muslim Khan	Residence Orderly	He will draw pay against vacant post of Naib Qasid

-sd/-

Secretary PSC

No.KPK/PSC/Admn/ 26661

Dated 13/5/2022

Copy to:-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Director Recruitment, Khyber Pakhtunkhwa PSC.
3. The Deputy Director Admn, Khyber Pakhtunkhwa PSC.
4. PS to Chairman, Khyber Pakhtunkhwa PSC.
5. PS to Secretary, Khyber Pakhtunkhwa PSC.
6. The Cashier, Khyber Pakhtunkhwa PSC.
7. Personal files of the Officials.
8. Office Order file.

Assistant Director (Admn)

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

EXECUTION PETITION NO. 231 /2021

IN

APPEAL NO.1375/2019

MUSLIM KHAN

V/S

P.S.C DEPTT:

**I N D E X**

S.N O	DOCUMENTS	ANNEXURE	PAGE
1	Memo of implementation	.....	1 - 2
2	Affidavit	.....	3
3	Order/judgment dt: 02.09.2021	A	4-9
4	Wakalat Nama	.....	10

Dated: \_\_\_\_10.2021

**APPELLANT**

Through:

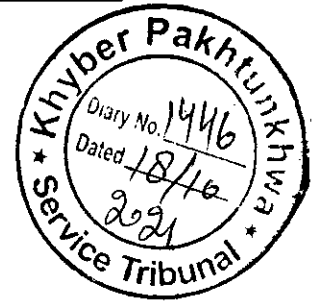
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

FLATE NO. 04, 2<sup>ND</sup> FLOOR,  
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,  
WARSACK ROAD, PESHAWAR

**0345-9383141**

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

Implementation Petition No. 231 /2021  
In  
Appeal No.1375/2019



Mr. Muslim Khan, Ex-Residence Orderly,  
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

.....**PETITIONER**

**VERSUS**

- 1- The Chairman, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director Administration, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

**IMPLEMENTATION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO OBEY THE JUDGMENT DATED**  
**02.09.2021 IN LETTER AND SPIRIT.**

**R/SHEWETH:**

- 1- That the petitioner filed service appeal bearing No. 1375/2019 before this August Service Tribunal for his reinstatement to the post of Residence Orderly from due that with all back benefits.
- 2- That the appeal of the petitioner was heard and the appellate authority is directed as follows" ***Consequent upon the above discussion, the appeal in hand as well as connected Appeal bearing No:1375/2019 titled Muslim Khan v/s Chairman Public Service Commission, KPK, Peshawar and two others as well as service appeal bearing no: 1376/2019 titled Taj Wali v/s Chairman KPPSC, Peshawar and two others are allowed by setting aside the impugned orders of dismissal of Appellants and they are re-instated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.***" Copy of the judgment dated 02-09-2021 is attached as annexure.....**A.**
- 3- That after obtaining copy of the judgment dated 02-09-2021 the petitioner submitted the judgment mention

above for its implementation to the Department concerned but the respondent Department are not willing to obey the judgment dated 02-09-2021 in letter and spirit.

- 4- That the petitioner has no any other remedy but to file this implementation petition.

It is therefore, most humbly prayed that the respondents may be directed to implement the order/judgment dated 02-09-2021 in letter and spirit. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the petitioner.

**PETITIONER**  
*Muhammad*  
**MUSLIM KHAN**

**THROUGH:**  
*03*  
**NOOR MOHAMMAD KHATTAK**

**&**  
*Haider Ali*  
**HAIDER ALI**  
**ADVOCATES**

3

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

**EXECUTION PETITION NO. \_\_\_\_\_/2021**

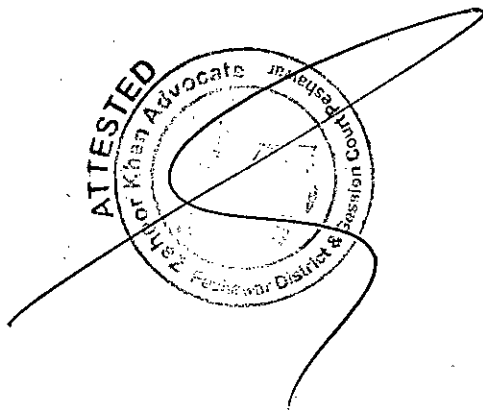
**MUSLIM KHAN**

**VS**

**P.S.C DEPTT:**

**AFFIDAVIT**

Stated on oath that the contents of the accompanying **execution petition** are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



*Muslim Khan*  
**DEPONENT**

**CERTIFICATE:**

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

*Muslim Khan*  
**CERTIFICATION**



# ANNEXURE A

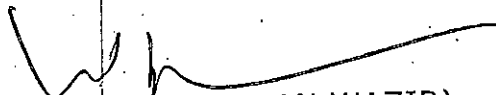
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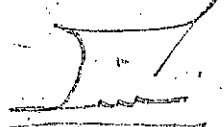
ORDER  
02.09.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Mehtab Gul, Law Officer alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.


Vide our detailed judgment of today passed in Service Appeal bearing No. 1374/2019 titled "Zahoor Khan Versus Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others", the appeal in hand is allowed by setting aside the impugned order of dismissal of appellant and he is re-instated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
02.09.2021

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**ATTESTED**



**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.**

Service Appeal No. 1374/2019

Date of Institution ... 18.10.2019

Date of Decision ... 02.09.2021



Zahoor Khan, Ex-Naib Qasid, Khyber Pakhtunkhwa Public Service Commission, Peshawar.

... (Appellant)

**VERSUS**

Chairman, Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Mr. NOOR MUHAMMAD KHATTAK,  
Advocate

For appellant.

MR. RIAZ AHMED PAINDAKHEIL,  
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN

MEMBER (JUDICIAL)

MR. ATIQ-UR-REHMAN WAZIR

MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of the instant Service Appeal as well as Connected Service Appeal bearing No. 1375/2019 titled "Muslim Khan Versus Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others" as well as Service Appeal bearing No. 1376/2019 titled "Taj Wali Versus Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others", as common questions of law and facts are involved in all these appeals.

2. Precise facts giving rise to filing of the instant service appeal as well as connected service appeals mentioned above

**ATTESTED**

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

are that the appellants namely Zahoor Khan, Taj Wali and Muslim Khan were serving in the Khyber Pakhtunkhwa Public Service Commission Peshawar as Naib Qasid, Residence Orderly and Driver respectively. Certain tempering was found in the result, attendance sheets and descriptive sheets as well as attendance sheets of interviews held w.e.f 06-07-2011 to 12-08-2011 for the posts of male Lecturer Botany (BPS-17) in Higher Education Department, which resulted in initiation of disciplinary action against the appellants as well as certain other officials. On conclusion of the inquiry, major penalty of dismissal from service was imposed upon the appellants, therefore, they filed separate departmental appeals, which were also rejected. The appellants have now approached this Tribunal through filing of service appeals for redressal of their grievance.

3. Notice was issued to the respondents, which submitted their comments, wherein they refuted the contention of the appellants.

4. Learned counsel for the appellants has contended that inquiry proceedings were conducted in a slipshod manner and neither the concerned candidates nor the complainant namely Mr. Zubair Shah, the then Member Khyber Pakhtunkhwa Public Service Commission were examined during the inquiry proceedings; that the inquiry proceedings were conducted in utter disregard of the relevant provisions of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011 and the appellants were not even provided an opportunity of cross-examination of the witnesses; that neither any final show-cause notices were issued to the appellants nor an opportunity of personal hearing was afforded to them; that the inquiry proceedings are tainted with legal lacunas and the penalty imposed upon the appellants cannot be legally based on such inquiry; that a criminal case regarding the alleged incident was also registered vide case FIR No. 18/2011 U/Ss 419/420/486/471 PPC read with section 5(2) of prevention of corruption Act, registered in PS ACE Peshawar, however the appellants have already been acquitted in the said case. Reliance was placed on 2008 SCMR 1369, PLD 2012 Tr.C.

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ATTESTED

(Services) 6, 2008 SCMR 609, 2000 SCMR 1347, 2003 PLC (C.S) 365, PLJ 2017 Tr.C. (Services) 198 and 2007 SCMR 192.

5. On the other hand, learned Assistant Advocate General for the respondents has argued that proper inquiry was conducted against the appellants by complying all legal and codal formalities and the appellants were found involved in the ugly incident of manoeuvring in the record for the purpose of passing failed candidates, who had paid bribe to the appellants for achieving their illegal goal; that the appellants were issued final show-cause notices and opportunity of personal hearing was also afforded to them, however they failed to produce any evidence regarding their innocence; that sufficient material connecting the appellants with the unfortunate incident has been brought on record during the inquiry, therefore, the appellants were rightly dismissed from service; that departmental proceedings are quite distinguished from the criminal proceedings, therefore, mere acquittal of the appellants in the criminal case cannot make them entitled for reinstatement in service. Reliance was placed on 2021 PLC (C.S) 587, 2000 PLC (C.S) 484 and 2005 SCMR 1802.

6. Arguments heard and record perused.

7. The allegations against the appellants are that they while serving in Khyber Pakhtunkhwa Public Service Commission had in connivance with other co-accused had committed the crime of tempering the results, descriptive sheets as well as attendance sheets of interviews held with effect from 06.07.2011 to 12.08.2011 for the post of male Lecturer Botany (BPS-17) in Higher Education Department and hoodwinked candidates for bribe in return of illegal selection/appointment against the posts of male Lecturer Botany. In order to prove the allegations against the appellants, statements of certain employees of Khyber Pakhtunkhwa Public Service Commission as well as statement of one of the candidate namely Asmat Ullah S/o Raqim Khan were recorded through questionnaires, without providing any opportunity of cross-examination to the appellants. Similarly, the statement of complainant Mr. Ajeesh Shah former Member-V Khyber Pakhtunkhwa Public Service

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ATTESTED

8

Commission was recorded on 22.07.2019, without providing any opportunity of cross-examination to the appellants. The inquiry committee has thus blatantly violated rule-6 sub-rule (2) of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011 by not affording any opportunity of cross-examination to the appellants. Even otherwise too, the witnesses so examined by the inquiry committee have not named the appellants as culprits in the alleged incident. Similarly, the statement of co-accused namely Fazal Rehman can also be taken not into consideration against the appellants for the reasons that his statement was also recorded without any opportunity of cross-examination being provided to the appellants.

8. The appellants have specifically alleged in para-F of their respective service appeals that no charge sheet and statements of allegations were issued to them. In response, the respondents have given joint reply of paras (F) & (G) of the appeals in a vague manner for covering the lacuna of non-issuing of statement of allegations and charge sheet. Neither charge sheet and statement of allegations were annexed with the comments nor the same were provided during the course of arguments, therefore, the assertion of the appellants regarding non-provision of the same shall be admitted as correct. The aforementioned fact has created material dent in the inquiry proceedings, rendering it a nullity in the eye of law. According to the available record no cogent oral or documentary evidence was produced during the inquiry proceedings, which could in any way link the appellants with the alleged tempering in the official record. Moreover, the appellants have already been acquitted in the criminal case registered regarding the incident. The criminal case was registered against the appellants as well as others on the same charges, which led to the disciplinary action against the appellants, therefore, in view of the acquittal of the appellants, the charges leading to departmental action against the appellants are no more in field.


Consequent upon the above discussion, the appeal in hand as well as connected Appeal bearing No. 1375/2019 titled "Muslim Khan Versus Chairman Public Service Commission"

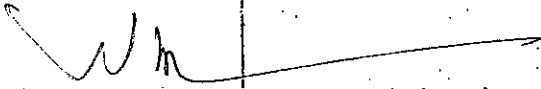
**ATTESTED**

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Khyber Pakhtunkhwa, Peshawar and two others" as well as Service Appeal bearing No. 1376/2019 titled "Taj Wali Versus Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others", are allowed by setting aside the impugned orders of dismissal of appellants and they are re-instated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
02.09.2021

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

**Certified to be true copy**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 02/9/21  
Number of Applicants 3200  
Cases 34  
Urgent —  
Total 34  
Name of Applicant —  
Date of Completion of Copy —  
Date of Delivery of Copy 9/9/21

  
**ATTESTED**

**VAKALATNAMA**

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

APPEAL NO: \_\_\_\_\_ OF 2021

MUSLIM KHAN (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

PUBLIC SERVICE COMMISSION (RESPONDENT)  
(DEFENDANT)

I/We MUSLIM KHAN

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2021

*Muslim Khan*

**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

*Kamran Khan*  
**KAMRAN KHAN**

**&**

*Umar Farooq Mohmand*  
**UMAR FAROOQ MOHMAND**

*Said Khan*  
**SAID KHAN**

*Haider Ali*  
**HAIDER ALI**  
**ADVOCATES**

**OFFICE:**

Flat No.4, 2<sup>ND</sup> Floor,  
Juma Khan plaza near  
FATA Secretariat, Warsak road  
Peshawar City. Mobile No. 0345-9383141



MUSLIM KHAN

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