18.07.2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Asif, Assistant for the respondents present.

Implementation report not submitted. Representative of the respondents requested that time may be granted to him for submission of implementation report. Adjourned. To come up for implementation report before the S.B on 19.10.2022.

(Mian Muhammad)
Member (E)

19th Oct, 2022 Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Implementation report has not been filed. Last chance is given to the respondents to file implementation report on the next date positively. This case is regarding consideration for promotion of the petitioner and the said matter could only be dealt with the authorities of the petitioner and not by the respondent No.2 and 4 i.e Secretary Finance and the Headmaster, Muhammad Ajmal Khan. Therefore, those are unnecessary party and deleted from the panel of respondents. Office is directed to make entries in this respect in the memo of the execution petition as well as in the relevant register. To come up for implementation report on 08.11.2022 before S.B.

(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No. 259/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.04.2022	The execution petition of Mr. Dildar Hussain submitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-	Noted Noor Mohd Khattak 26/4/22	This execution petition be put up before to Single Bench at Peshawar on 07-06-2022. Original file be requisitioned. Notices to the parties be also issued for the date fixed. CHAIRMAN
	07.06.2022	Nemo for petitioner. Lawyers are on general strike. Notice be issued to respondents for submission of implementation report. To come up for implementation report on 18.07.2022 before S.B. (Rozina Rehman) Member (J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 259 /2022
IN
SERVICE APPEAL NO. 874/2014

DILDAR HUSSAIN V/S EDUCATION DEPTT:

I N D E X

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of implementation	.....	1 – 2
2	Affidavit	.....	3
3	Judgment dt: 18.01.2022	A	4-9
4	Wakalat Nama	.....	10

Dated: _____.04.2022

APPELLANT

Through:
NOOR MOHAMMAD KHATTAK
ADVOCATE
0345-9383141

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No. 259 /2022
In
Appeal No.874/2014

Mr. Dildar Hussain, Incharge Headmaster (BPS-17),
GHS Mali Khel, Kurram Tribal District.

.....PETITIONER

VERSUS

1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3- The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
4- Mr. Muhammad Ajmal Khan, Headmaster (BPS-17) C/O of the Director (E&SE) Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 18-01-2022 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 874/2014 before this august Service Tribunal for his antedated promotion.

2- That the appeal of the petitioner was heard and was accepted with the direction to the respondents as follows" ***In view of the forgoing discussion, the instant service appeal as well as connected service appeals are accepted. Respondents are directed to include name of the appellants in appropriate place in the seniority list issued on 30-06-2010 and to consider him for promotion from the date, his juniors wee promoted. Parties are left to bear their own costs. File be consigned to record room.*** Copy of the judgment dated 18-01-2022 is attached as annexure **.....A.**

3- That after obtaining copy of the judgment dated 18-01-2022 the petitioner submitted the judgment mention above for its implantation to the Department concerned

but the respondent Department are not willing to obey the judgment dated 18-01-2022 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 18-01-2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER

DILDAR HUSSAIN

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

EXECUTION PETITION NO._____/2022
IN

SERVICE APPEAL No. 874/2014

DILDAR HUSSAIN **VS** **EDUCATION 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.

ATTESTED Advocate District & Session Court Peshawar

DEPONENT

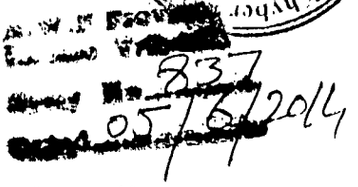
CERTIFICATE: Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

ANNEX. A" (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 874 /2014



Mr. Dildar Hussain, Incharge Headmaster (BPS-17),
GHS Mali Kheil, Kurram Agency ..... **Appellant**

VERSUS

1- The Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Khyber Pakhtunkhwa, Peshawar.
2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4- The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
5- The Director of (E&SE) Department FATA, FATA Secretariat Khyber Pakhtunkhwa, Peshawar.
6- Mr. Mohammad Ajmal Khan, Headmaster (BPS-17), C/O Director FATA (E&SE) Department, FATA Secretariat, Wrasak Road Peshawar.

..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 26.2.2013 WHEREBY JUNIOR COLLEAGUE OF THE APPELLANT i.e. RESPONDENT No.6 HAVE BEEN REGULARLY PROMOTED TO THE POST OF HEADMASTER (BPS-17) WHILE THE APPELLANT HAS BEEN IGNORED WITHOUT ANY REASON AND CLEAR JUSTIFICATION AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PRAYER:

That on acceptance of this appeal the respondents may be directed to consider the appellant for regular promotion to the post of Headmaster (BPS-17) from the date when the respondent No.6 was promoted to the post of Headmaster (BPS-17) i.e. w.e.f. 26.2.2013 with all consequential benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

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ORDER
18.01.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakheil, Assistant Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 873/2014 "titled Nasir Hussain Versus Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Khyber Pakhtunkhwa, Peshawar and five others. The instant service appeal is accepted. Respondents are directed to include name of the appellant in appropriate place in the seniority list issued on 30-06-2010 and to consider him for promotion from the date, his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
18.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of Presentation of Application 22/3/22
Number of Words 800
Copying Fee 10/-
Urgent 5
Total 10/-
Name of Copyist
Date of Completion of Copy 24/3/22
Date of Delivery of Copy 24/3/22

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 873/2014

Date of Institution ... 05.06.2014
Date of Decision ... 18.01.2022

Mr. Nasir Hussain, Incharge Headmaster (BPS-17), GHS Bushera, Kurram Agency. ... (Appellant)

VERSUS

The Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Khyber Pakhtunkhwa, Peshawar and others. ... (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Riaz Khan Paindakheil,
Assistant Advocate General ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein.

1. Service Appeal bearing No. 933/2013 titled Nasir Hussain
2. Service Appeal bearing No. 934/2013 titled Dildar Hussain
3. Service Appeal bearing No. 874/2014 titled Dildar Hussain

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

02. Brief facts of the case are that the appellant joined Education Department as Senior English Teacher (Technical-BPS-16) vide order dated 01-04-1987. Vide order dated 30-03-2011, the appellant was posted as Head Master (BPS-17) in his own pay and scale and before this the appellant was also awarded selection grade (BPS-17) vide order dated 21-01-2009. Before merger of SET technical,

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general and science, in the seniority list prepared for SET Technical, the name of the appellant was at serial No. 73 of the seniority list issued on 30-06-2007. Because of different seniority lists of SET technical, science and general, SET who belong to General and Science cadre had been promoted to BPS-17 post on regular basis, while the SET who belong to technical cadre were left out in such promotions. Feeling aggrieved, other colleagues of the appellant filed a writ petition in Peshawar high court for merging the seniority list, which was accepted and in pursuance the respondents merged the seniority list and issued a combined seniority list vide order dated 30-06-2010, but name of the appellant was not included in such seniority list. feeling aggrieved, the appellant filed departmental appeal, which was not responded, hence the instant appeal with prayers that the respondents may be directed to include the name of the appellant at a right place in the list of SET issued vide notification dated 30-06-2010.

03. Learned counsel for the appellant has contended that not including the name of the appellant in the combined seniority list of SETs issued on 30-06-2010 is against law, fact and norms of natural justice, hence is liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that inspite of senior most employee of the respondents department and having more than 25 years service at his credit, the appellant name was ignored in the combined seniority list of SETs; that many colleagues and junior colleagues of the appellant have been regularly promoted on the post of head master, but the appellant has been ignored in such promotions despite the seniority position under the pretext that his name has not been included in the combined seniority list.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

04. Learned Assistant Advocate General for the respondents has contended that the appellant has been working against the post of SET (Technical) and was adjusted against the post of head master in his own pay and scale vide order

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dated 30-03-2011, therefore plea of the appellant regarding his promotion and adjustment against the post of head master in BPS-17 is against the facts and notification dated 30-03-2011; that cadre of the appellant is basically SET(Technical), therefore, the respondents department has prepared a separate seniority list for the said cadre, hence being a stranger and out cadre official, the appellant cannot be included in the seniority list pertaining to the SET General and Science, hence he has been rejected for the grant of BPS-17; that it is correct that a combined seniority list has been issued by the respondents vide order dated 30-06-2010, wherein the name of the appellant could not be included due to the non regularization of his service against SET Technical post on the ground that seniority against a post is normally granted from the date of passing of professional qualification/service regularization against the post in question.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that there were three groups in one cadres of SET i.e. SET Technical, General and Science and separate seniority lists were maintained for each groups. The appellant being SET Technical was at serial No. 73 of the seniority list of SET Technical issued on 30-06-2007. Certain colleagues of the appellant filed Writ Petition No. 870/2010 for merger of the seniority list of all the three groups, which was allowed by the High Court vide judgment dated 05-03-2010. In compliance, the respondents issued a combined seniority list on 30-06-2010, where name of the appellant was not included, against which the appellant filed departmental appeal which was also not taken into consideration. Judgment of the honorable High Court is very clear having no ambiguity and ignoring name of the appellant from joint seniority list is not understandable. Placed on record is a promotion order dated 26-02-2013, where colleagues and junior of the appellant is shown as promoted as head master in BPS-17, but the appellant is left out for no obvious reason. Representative of the respondents later on realized

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that the name of the appellant was erroneously not included in the seniority list, which will be included in the forthcoming seniority list.

07. In view of the foregoing discussion, the instant service appeal as well as connected service appeals are accepted. Respondents are directed to include name of the appellants in appropriate place in the seniority list issued on 30-06-2010 and to consider him for promotion from the date, his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
18.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22/3/22
Number of Words 1600
Copying Fee 18/-
Urgent ———
Total 18/-
Name of Copyist ———
Date of Completion of Copy 24/3/22
Date of Delivery of Copy 24/3/22

(10)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CASE NO: _____ OF 2022

Dildar Hussain (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Education Deptt. (RESPONDENT) (DEFENDANT)

I/We Dildar Hussain

Do hereby appoint and constitute **NOOR MUHAMMAD 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._____/_____/2022

CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

UMER FAROOQ MOHMAND

KAMRAN KHAN

HAIDER ALI

&

KHANZAD GUL

ADVOCATES