

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 527/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.09.2022	<p>The execution petition of Mr. Shamshi Khan submitted today by Syed Abdul Haq Advocate. It is fixed for implementation report before touring Single Bench at Swat on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p>

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

Execution Petition no - 527/2022

C.M. _____/2022 IN
Service Appeal 891 of 2019

Shamshi KhanApplicant

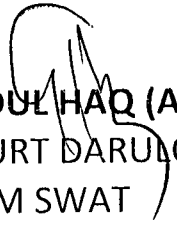
VERSUS

Director E&SE and othersRespondents.

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Applicant/appellant through Counsel


SYED ABDUL HAQ (ASC)
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0333-9546154

(1)

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

Execution Petition no. 527/2022

C.M. _____/2022 IN

Service Appeal 891 of 2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1193

Dated 08/9/2022

Shamshi Khan Senior Arabic Teacher, SAT (BPS-16) Presently
Serving in Govt High School Matiltan Kalam District Swat.

.....Applicant

VERSUS

1. Director E&SE Department Khyber Pakhtunkhwa at Peshawar.
2. District Education (Male) District Swat. Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT RENDERED BY THIS HONOURABLE
TRIBUNAL IN SERVICE APPEAL BEARING NO.891
OF 2019 DATED 09.12.2021.**

Respectfully Sheweth;

The facts of the instant application are, as under.

- 1) That the appellant/applicant instituted a service bearing
no. 891/2019 before this honourable Tribunal on
08.07.2019 wherein comments were called from the

concerned respondents and the case was posted for arguments.

- 2) That after hearing this honourable Tribunal accepted the appeal vide judgment dated 09.12.2021 and directed the respondents to promote the applicant/appellant to the post of Senior Arabic Teacher (BPS-16) w.e.f. 27.02.2013 with all back benefits including seniority (Copy of judgment dated 09.12.2021 is attached as annexure-A).
- 3) That after on 27.12.2021, receiving the judgment, the applicant approached the office of respondent No.1 and submitted the judgment a/w application before the respondents for compliance/implementation of the same in its true spirit.
- 4) That the applicant being a senior citizen visited the office concerned time and again and was told verbally that the judgment of this honourable Tribunal would be implemented in letter and spirit, but after passing some days he was informed that the respondents are intended to challenge the judgment of this honourable Tribunal in Supreme Court of Pakistan.

5) It is very astonishing, that passing almost one year the respondents are not willing to either implement the judgment of this honourable Tribunal or showed any status quo/suspension order yet to date, so, applicant have no other efficacious and adequate remedy except to approach this honourable Tribunal and file the instant application for implementation for the judgment of this honourable Tribunal interalia on the following grounds

GROUNDS


- A. That the act of respondent as not obeying the order/judgment of this honourable Tribunal in its true spirit is highly discriminatory and just to deprive the applicant from his legitimate rights.
- B. That such act of respondent is against the 10-A of the constitution as right of due process and fair trial is fundamental right of applicant.
- C. That the respondents submitted comments and tried their best to rebut the stance of applicant/appellant but whenever this honourable Tribunal passed his judgment

mentioned *ibid* then there is no other way for respondents except to implement such judgment in letter in spirit without any artificial break/delay.

- D. That the respondent No.1 have no authority to delay the judgment of this honourable Tribunal on the pretext that "they are challenging the decision in the apex Court" and if such practice on part of respondents was not discouraged then, the dignity/decorum of this honourable Tribunal would be demolished.
- E. That the applicant seeks leave of this honourable court to raise/argue any additional point at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this application the respondents may kindly be directed to implement spirit of the judgment rendered by this honourable Tribunal from the date of its announcement.

Applicant through Counsel


SYED ABDUL HAQ,
Advocate, Supreme Court
03110950959

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

C.M _____/2022 IN
Service Appeal 891 of 2019

Shamshi KhanApplicant
VERSUS

Director E&SE and othersRespondents.

AFFIDAVIT

I, *Shamshi Khan Senior Arabic Teacher, SAT (BPS-16)*
Presently Serving in Govt High School Matiltan Kalam District
Swat, do hereby solemnly affirm and declare on oath that
contents of above application are true and correct to the best of
knowledge and belief, and nothing has been kept concealed
therein before this honourable tribunal.

شامشی خان

DEPONENT

15602-0462649-3
0348-4603805

ATTESTER



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 891 /2019



Dated 08/07/2019

Mr. Shamshi Khan ; S.A.T (BPS-16),
GHS Matiltan. (Kalam), District Swat APPELLANT

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), Swat at Gul Kada.
- 4- Mr. Muhammad Ishaq, SAT, GMS Jehanabad, District Swat.
- 5- Mr. Hussain Ahmad, SAT, GHS No.4, Mingora District Swat.
- 6- Mr. Aziz Ahmad, SAT, GHS Torogay, District Swat.
- 7- Mr. Abdul Wadood, SAT (BPS-16), GHCMS Wadudia, Swat.
- 8- Mr. Abdul Hassan, SAT (BPS-16), GHS Shagai, District Swat.
- 9- Mr. Muhammad Naeem, SAT (BPS-16), GHS Gwalarai, Swat.
- 10- Mr. Muhammad Yousaf, SAT, GHS GMS Kabalkoo, Swat.
- 11- Mr. Shah Hussain, SAT, GHS Kanju, Swat.
- 12- Mr. Siraj Ul Haq, SAT, GMS Dero, Swat.
- 13- Mr. Ihtesham Ul Haq, SAT, GHS Kanju, Swat.
- 14- Mr. Lutfullah, SAT, GHS Qambar, District Swat.
- 15- Mr. Fazal Khaliq, SAT, GHS Tindo dag, District Swat.
- 16- Mr. Nawab Ali Khan, SAT, GHS Bandai, District Swat.
- 17- Mr. Abdur Razaq, SAT, GHS Nawikalay (M), District Swat.
- 18- Mr. Miftahud Din, SAT, GHSS Fatehpur, Swat.
- 19- Mr. Said Muhammad, SAT, GHSS Baidara, Swat.
- 20- Mr. Farooq Shah, SAT, GHS Parri, District Swat.
- 21- Mr. Fazli Azim, SAT, GHS Rahatkot, District Swat.
- 22- Mr. Khurshid Ali, SAT, GHS Deolai, District Swat.
- 23- Mr. Fazal Raziq, SAT, GHS Sirsinai, District Swat.
- 24- Mr. Amir Zada, SAT, GHS Laikot, District Swat.
- 25- Mr. Abdul Qayum, SAT, GHS Labat, District Swat.
- 26- Mr. Ghulam Muhammad, SAT, GHSS Kalam, District Swat.
- 27- Mr. Murad Khan, SAT, GMS Jalband, District Swat.
- 28- Mr. Rohul Amin, SAT, GHSS Shamozai, District Swat.
- 29- Mr. Inam Ur Rehman, SAT, GHS Shamozai, District Swat.
- 30- Mr. Muhammad Ishaq, SAT, GHS Tall, District Swat.
- 31- Mr. Fazal Hadi, SAT, GHS Barawal, District Swat.
- 32- Mr. Fazal Rabi, SAT, GHS Shalpin, District Swat.
- 33- Mr. Muhammad Salahud Din, SAT, GHS Kokarai, District Swat.
- 34- Mr. Muhammad Ghani, SAT, GHSS Kishwara, District Swat.
- 35- Mr. Watan Karam, SAT, GMS Damana, District Swat.

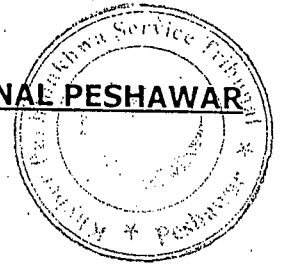
..... RESPONDENTS

REGISTRAR
8/7/19

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REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT**



Service Appeal No. 891/2019

Date of Institution ... 08.07.2019

Date of Decision ... 09.12.2021

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Mr. Shamshi Khan, S.A.T (BPS-16) GHS Matiltan (Kalam), District Swat.
... (Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and thirty
four others. ... (Respondents)

Noor Muhammad Khattak & Syed Abdul Haq
Advocates ... For Appellant

Muhammad Rasheed,
Deputy District Attorney ... For official respondents No. 1 to 3

ROZINA REHMAN ... MEMBER (JUDICIAL)
ATIQU-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was appointed as Arabic Teacher (BPS-9) vide order dated 29-03-1988 and in due course was granted BPS-14 vide order dated 02-03-1998. As per seniority list dated 31-07-2012, the appellant was at serial No 51 of the seniority list, but the appellant case for promotion to the post of Senior Arabic Teacher (BPS-16) was deferred and promoted private respondents vide order dated 27-02-2013. Feeling aggrieved, the appellant filed departmental appeal followed by service appeal No 1079/2013, which was dismissed vide judgment dated 07-11-2016, thereafter, the appellant filed CPLA in the august Supreme Court of Pakistan, but the same was withdrawn by the appellant vide judgment

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dated 24-01-2018. The appellant filed another departmental appeal followed by another Service Appeal No. 609/2018, but in the meanwhile the appellant was promoted to the post of Senior Arabic Teacher (BPS-16) vide order dated 28-02-2019, hence such appeal was withdrawn vide order dated 08-03-2019 to file a fresh appeal. Vide instant service appeal, the appellant has made impugned his promotion order dated 28-02-2019 with prayers that the impugned order dated 28-02-2019 may be modified/rectified to the extent the appellant may be allowed promotion to the post of senior Arabic teacher with effect from 27-02-2013, the date, when his other colleagues were promoted and case of the appellant was deferred.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice, hence not tenable in the eye of law and is liable to be modified; that the appellant has not been treated in accordance with law, as such the respondents violated Article-4 and 25 of the Constitution; that junior colleagues of the appellant (private respondents) were promoted on 27-02-2013, therefore, the appellant is also held entitled to said promotion; that the treatment meted out to the appellant is based on nepotism and favoritism, therefore not tenable in the eye of law; that the impugned order has been issued in arbitrary manner with malafide, therefore, not tenable and liable to be modified; that as per law, the appellant is entitled to seniority and other benefits from the date, when private respondents were promoted on 27-02-2013.

03. Learned counsel for official respondents No. 1 to 3 has contended that name of the appellant was included in the seniority list and he was duly considered for promotion, but his case for promotion was deferred due to non-recognition/non-equivalence of his certificate (sanad) by Higher Education Commission and junior to the appellant were promoted vide order dated 27-02-2013; that it is correct that the appellant obtained sanad of Shahadatul Alamia from government

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EXAMINER
Khyber Pakhtunkhwa
Service Commission
Peshawar

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EXAMINER
Khyber Pakhtunkhwa

Darul uloom Charbagh in May, 2014, but the impugned order of promotion was issued on 27-02-2013; that the appellant was promoted to the post of Senior Arabic Teacher vide order dated 28-02-2019 with immediate effect on the basis of Shahadatul Alamia acquired in May, 2014; that the previous Service Appeal No. 1079/2013 of the appellant was dismissed vide judgment dated 07-11-2016; that CPLA filed by the appellant was also dismissed by august Supreme Court of Pakistan vide judgment dated 24-01-2018 in CP No. 66/2017, hence the issue has been settled by this tribunal as well as the supreme court of Pakistan, which does not warrant any interference.

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

05. Record reveals that case of the appellant for promotion to the post of Senior Arabic Teacher was deferred due to the reason that he did not possess the required qualifications for promotion to next grade. We have observed that the appellant at the time of his initial appointment on 29-03-1988 as Arabic Teacher was duly equipped with the requisite qualification. In 2012 amendments were brought in service rules vide notification dated 13-11-2012 and according to serial No. 10 of the said appendix to notification, qualification for promotion to the post of Senior Arabic Teacher was to possess SSC second class certificate from recognized board with Shahadatul Alamia from recognized Tanzimul Wafaqul Madaris or Darul Uloom Saiddo Sharif Swat, Darul Uloom Char bagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other government run Darul Uloom as notified by government from time to time or second class master degree in Arabic from a recognized university. It is noteworthy that the appellant also possessed the same qualification but the sanad so obtained was not from the Madaris as mentioned in the notification. The appellant obtained equivalence certificate from Dar Ul Uloom Char Bagh Swat in May 2014, according to which the qualification already possessed by the appellant were declared equivalent to

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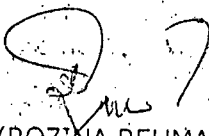
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

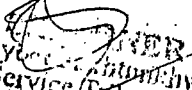
Shahadatul Alamia and on the basis of such qualification, granted certificate of Shahadatul Alamia by Darul Uloom Char Bagh Swat to the appellant and on the basis of such equivalence, the appellant was promoted to the post of Senior Arabic Teacher vide order dated 28-02-2019. The appellant is seeking relief to the extent that since he was deferred for want of qualification and now promoted him on the basis of equivalence certificate, which shows that the qualification, which the appellant possessed, were already equal to the one mentioned in service rules, but promotion of the appellant was delayed for no good reason.

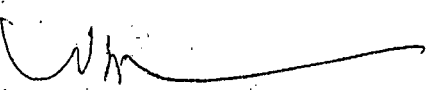
06. We have observed that the appellant was already possessing the required qualification, which however was authenticated by Darul Uloom Char Bagh in May, 2014 and which means that case of the appellant for promotion to next grade was wrongly deferred for longer time and the appellant was kept deprived of his due right of promotion, which however was not warranted.

07. In view of the foregoing discussion, the instant appeal is accepted and the impugned order dated 28-02-2019 is modified to the extent that the appellant stands promoted to the post of senior Arabic teacher (BPS-16) with effect from 27-02-2013, the date when private respondents were promoted with all back benefit including seniority. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
09.12.2021


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT SWAT

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT SWAT

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SYED ABDUL HAQ
ADVOCATE, SUPREME COURT


Mobile : 0311-0950959
Email : syedabdulhaq@gmail.com
Address: Swat Shopping Mall, Opp:
Peshawar High Court Mingora Bench,
Swat.

To,

Director E&SE Department,
Khyber Pakhtunkhwa at Peshawar.

Memo

I am filing an application in Service tribunal against non-implementation of judgment dated 06.12.2021 passed in favour of Shamshi Khan Senior Arabic Teacher, SAT (BPS-16) Presently Serving in Govt High School Matiltan Kalam District Swat. (Copy of the application is sent herewith for your information).


SYED ABDUL HAQ
Advocate Supreme Court

BEFORE HON'BLE PESHWAR SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA AT SWAT.

CM _____ 2022 **WAKALAT NAMA**
in SA Case No. 891 of 2019

CASE TITLE

Shamshi Khan

VERSUS

Director EGSE and others

I, petitioner, do hereby appoint SYED ABDUL HAQ Advocate, Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct prosecution or defence of the said case at all its stages.
- To receive payment of and issue receipts for, all money that may be or become due and payable to us during the course of proceedings.
- To do any act necessary or ancillary to the above acts, deed and things.
- To appoint any other counsel to do any/all of the acts, deeds and things.
- I/We shall appear in the court/tribunal on every date of hearing for assistance and if due to my/our non-appearance, any adverse judgment/order/decree is passed, they will not be held responsible.

In witness whereof I/We have signed this Wakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this, 09/2022.

Shamshi Khan
Signature of Executant

Attested & Accepted by:

SYED ABDUL HAQ
Advocate, Supreme Court of Pakistan
Cell No. 0311-0950959