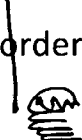


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 703/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.11.2022	<p>The execution petition of Mr. Hayat Ullah submitted today by Roeda Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar 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 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 703 /2022

In Service Appeal: 1254/2017

Hayatullah Bailiff in the Establishment of learned Civil Judge
Charsadda now-a-days posted as Bailiff in the Court of learned
Civil Judge-Shabqadar

..... Appellant

VERSUS

1. Learned District & Sessions Judge, Charsadda.
2. Learned Civil Judge, Charsadda.
3. Mujeeb Ur Rehman Naib Nazir/Junior Clerk in the court of
Senior Civil Judge Charsadda.

..... Respondents

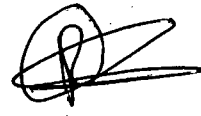
Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-7
3.	Wakalat Nama		

Dated 30/11/2022


Appellant

Through


Rooeda Khan
Advocate High Court,
Peshawar.

9 11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

0 Execution Petition No. 703 /2022

Khyber Pakhtunkhwa
Service Tribunal

In Service Appeal: 1254/2017

Diary No. 2089

Dated 30-11-2022

Hayatullah Bailiff in the Establishment of learned Civil Judge
Charsadda now-a-days posted as Bailiff in the Court of learned
Civil Judge-Shabqadar

..... Appellant

VERSUS

1. Learned District & Sessions Judge, Charsadda.
2. Learned Civil Judge, Charsadda.
3. Mujeeb Ur Rehman Naib Nazir/Junior Clerk in the court of
Senior Civil Judge Charsadda.

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 15/07/2021 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

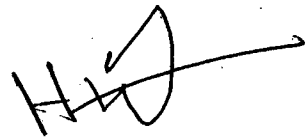
1. That the appellant/Petitioners filed Service Appeal No. 1254/2017 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 15/07/2021. (Copy of Judgment is annexed as Annexure-A).

(2)

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is legally bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of the instant execution Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

Dated 29/11/2022



Appellant/Petitioner

Through



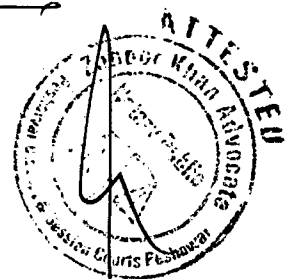
**Rooeda Khan
Advocate High Court Peshawar**

AFFIDAVIT

I, Hayatullah Bailiff do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.



DEPONENT



(3)

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 1254 /2017

Hayatullah Bailiff in the Establishment of learned Senior Civil Judge Charsadda now-a-days posted as Bailiff in the Court of learned Civil Judge, Shabqadar.....Appellant

Versus

1. Learned District & Sessions Judge, Charsadda
2. Learned Senior Civil Judge, Charsadda
3. Mujeeb Ur Rehman Naib Nazir/Junior Clerk in the court of Senior Civil Judge Charsadda.....Respondents

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1273

Dated 07-11-2017

Service Appeal U/S 4 of the Service Tribunal Act 1974, against the judgment/order dated 31/05/2017 whereby the Departmental appeal of Appellant was dismissed by Respondent No.1 and order Bearing No3232-26 SCJ dated 03/12/2016 issued by Respondent No,2 through which Respondents No.3 was promoted to the post of Naib Nazir/ Junior Clerk from the post of Bailiff on the recommendations of Departmental Promotion Committee.

PRAYERS IN APPEAL:

Filed to-day

Registrar
7/11/17

Re-submitted to -day and filed.

Registrar

13/11/17

Respectfully Sheweth:

Facts of case in brief are:-

1. That Appellant was inducted as Process Server in Process Serving Agency of Respondent No.2 in the year 1995 and presently serving as Bailiff in the court of learned Civil Judge, Shabqadar Distt Charsadda.

RECEIVED
[Signature]
CHIEF JUSTICE
Khyber Pakhtunkhwa Service Tribunal
Peshawar

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1254/2017

Date of Institution ... 07.11.2017

Date of Decision ... 15.07.2021



Hayatullah Bailiff in the Establishment of learned Senior Civil Judge Charsadda now-a-days posted as Bailiff in the Court of learned Civil Judge, Shabqadar.

... (Appellant)

VERSUS

Learned District & Sessions Judge, Charsadda and two others.

... (Respondents)

Mr. HAJI WASAL KHAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General


--- For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

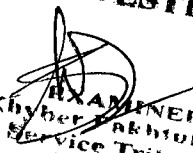
--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-


Precise facts of the instant Service Appeal are that the appellant as well as respondent No. 3 namely Mujeeb-ur-Rehman were serving as Bailiffs in the Establishment of Senior Civil Judge Charsadda. One post of Junior Clerk/Naib Nazir fell vacant, therefore, meeting of Departmental Promotion Committee was held on 03.12.2016 for filling of the aforementioned vacant post. Vide minutes of the meeting bearing endorsement No. 318-21/SCJ, Chd dated 03.12.2016, respondent No. 3 was recommended for promotion to the post of Naib Nazir (BPS-11). Upon the recommendations of the Departmental

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Promotion Committee, respondent No. 3 was promoted to the post of Naib Nazir (BPS-11) vide office order bearing endorsement No. 323-26/SCJ dated 03.12.2016 issued by Senior Civil Judge Charsadda. The appellant being aggrieved of the said office order, challenged the same through filing of departmental appeal before the learned District & Sessions Judge Charsadda, which was dismissed vide order dated 31.05.2017. The appellant then filed second departmental appeal before the worthy Administrative Judge Peshawar High Court, Peshawar, however the same was dismissed being not maintainable and the appellant was advised to approach the competent forum for redressal of his grievance. The appellant then approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

2. Learned counsel for the appellant has contended that the appellant being senior than respondent No. 3 was entitled to have been promoted to the post of Naib Nazir, however the Departmental Promotion Committee has wrongly and illegal promoted respondent No. 3 to the post of Naib Nazir; that promotion to the post of Naib Nazir was to be made on the basis of seniority-cum-fitness but the Departmental Promotion Committee ignored the prescribed criteria and granted promotion to respondent No. 3 on the ground that he had passed Secondary School Certificate examination in the year 1993 while the appellant had passed the same in the year 2015; that the criteria so adopted by the Departmental Promotion Committee was not applicable to the case of promotion of Bailiff, rather the same was to be adopted for the promotion of Process Server to the post of Naib Nazir/Junior Clerk, in case of non-availability of any Bailiff, suitable for promotion to the post of Naib Nazir/Junior Clerk; that the delay in filing of appeal is legally condonable for the reason that the appellant had inadvertently filed appeal in the august Peshawar High Court, Peshawar, which was dismissed being not maintainable and the appellant was advised to approach competent forum for redressal of his grievance.

3. Conversely, the learned Additional Advocate General for the respondents has argued that according to the criteria as mentioned on page 239 and 240 of Judicial Esta Code, Second

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

(b)

Edition 2011, seniority in case of promotion of Bailiff to the post of Naib Nazir shall be reckoned with reference to the date of acquiring of Secondary School Certificate, therefore, respondent No. 3 was promoted as he had acquired Secondary School Certificate in the year 1993, while the appellant had acquired the same in the year 2015; that the Departmental Promotion Committee had followed the relevant rules and no injustice has been done to the appellant; that the departmental appeal of the appellant was dismissed vide order dated 31.05.2017 and he has filed Service Appeal on 07.11.2017, therefore, the appeal is time barred and is liable to be dismissed.

4. Arguments heard and record perused.

5. A perusal of the record would show that the controversy cropped out, when in its meeting held on 03.12.2016, the Departmental Promotion Committee recommended respondent No. 3 for promotion to the post of Naib Nazir in the Establishment of Senior Civil Judge Charsadda, by deferring the appellant. According to the minutes of Departmental Promotion Committee, the appellant was senior as compared to respondent No. 3, however he was deferred and respondent No. 3, who was junior to the appellant, was recommended for promotion and notification of his promotion was issued by the office of Senior Civil Judge Charsadda through office order bearing endorsement No. 323-26/SCJ dated 03.12.2016. The reason so mentioned in the minutes for deferring the appellant was that according to Judicial Esta Code, Second Edition 2011, seniority of the official in the same BPS shall be reckoned with reference to the date of acquiring Secondary School Certificate, therefore, the appellant was deferred and respondent No. 3 was recommended for promotion as he had acquired Secondary School Certificate in the year 1993, while the appellant had acquired the same in the year 2015. In our humble view, the criteria so adopted by the Departmental Promotion Committee was not in accordance with the prescribed rules. According to Peshawar High Court, Peshawar (Sub-Ordinate Courts Staff) Recruitment Rules, 2003 as given on page 239 & 240 of Judicial Esta Code, Second Edition 2011, a Bailiff could be promoted to the post of Naib Nazir/Junior

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Clerk on the basis of seniority-cum-fitness, provided he has acquired Secondary School Certificate examination, with at least three years service as such. The seniority of Bailiffs is to be prepared on the basis of assumption of duty in the service and not on the basis of their acquiring Secondary School Certificate. The Departmental Promotion Committee had fell in to an error by deferring the appellant on the ground that he acquired Secondary School Certificate later in time than respondent No. 3.

6. The issue relates to promotion of Ministerial Staff of Sub-ordinate Judiciary, therefore, it appears that the appellant had bonafidely preferred second appeal before the august Peshawar High Court, Peshawar, however the same was dismissed being not maintainable and the appellant was directed to approach the competent forum for redressal of his grievance. Nothing is available on the record which could suggest that the filing of second appeal was with any ulterior motive. Besides that, decisions of cases on merit have always been encouraged instead of non-suiting the litigants for technical reasons. Reliance in this respect is placed on PLD 2003 Supreme Court 724. The delay in filing of the instant appeal is, therefore, condoned.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is held entitled to be promoted to the post of Naib Nazir with effect from 03.12.2016 with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

15.07.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)







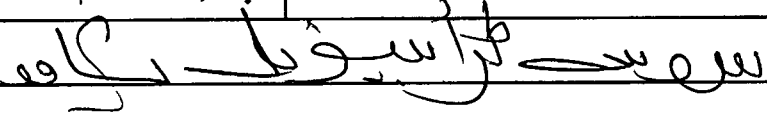
(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

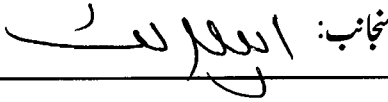

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 04/8/21
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Copying Fee 22/-
Urgent 4/-
Total 26/-
Name of Copyist _____
Date of Completion of Copy 04/8/21
Date of Delivery of Copy 04/8/21

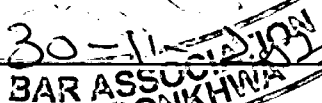
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بار کونسل/ ایسوسی ایشن نمبر: ۵۹-۲۵۱۶				
رابطہ نمبر: ۰۳۳۳۵۲۶۵۹۵۵				


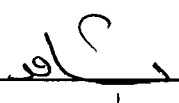
بعدالت جناب: 

منجانب: 	دعوی:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام  کیلئے روئے  اختیار کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سناختہ پرداختہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کر لیں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 
 PESHAWAR BAR ASSOCIATION
 KHYBER PAKHTUNKHWA
 خیبر پختونخواہ

الع بد  الع بد
 مقام  کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted
 By
