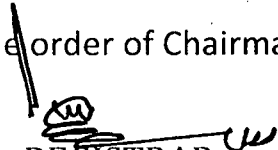


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 690/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.11.2022	<p>The execution petition of Syed Qambar Abbas submitted today by Mr. Noor Muhammad Khattak 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>

ADG

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

IMPLEMENTATION PETITION NO. 690 /2022

IN

APPEAL NO.1006/2019

SYED QAMAR ABBAS

VS

IRRIGATION DEPT:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	1-2
2.	Judgment/Order dated 19.01.2022	"A"	3-6
3.	Copy of application & reply	"B"	7-8
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PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 690/2022

In

Appeal No.1006/2019

Mr. Syed Qamar Abbas, Environmentalist (BPS-18),
Irrigation Department, Khyber Pakhtunkhwa.

.....PETITIONER

VERSUS

- 1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Secretary, Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Planning & Development Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Director Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 7- The Accountant General, Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENTS TO OBEY THE JUDGMENT DATED
19.01.2022 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 1006/2019 before this August Service Tribunal for his fixation of pay w.e.f 31.01.2003.
- 2- That the appeal of the petitioner was heard and the appellate authority is directed as follows "***Record reveals that the appellant was initially appointed as Environmentalist on contract basis under the scheme of Strengthening of Monitoring and Evaluation Capabilities of Planning Cell in Irrigation and Power Department vide order dated 31.01.2003. Employees of the above mentioned scheme including the appellant were regularized through the Khyber Pakhtunkhwa Planning and Monitoring Cell, Irrigation Employees***

(Regularization of Services) Act, 2017 dated 13.03.2017. In light of the provision of the Act a notification dated 24.04.2017 was issued through which services of the appellant along with other employees were regularized from the date of commencement of the Act. The appellant invoked the jurisdiction of Finance Division Notification dated 25.04.2017 which has clearly allowed pay protection of contract employees whose service has been regularized through an Act. The Provincial Government vide notification dated 18.03.2021 have also issued a notification in pursuance of the Federal Government notification and allowed pay protection to such employees. In view of the situation the instant appeal is accepted as prayed for. Copy of the judgment dated 19-01-2022 is attached as annexure **A.**

- 3- That after obtaining copy of the judgment dated 19-01-2022, the petitioner submitted the judgment mentioned above for its implementation to the department concerned but the respondent department is not willing to obey the judgment dated 19-01-2022 in letter and spirit. Copy of Application & reply is attached as annexure **B.**
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that the respondents may be directed to implement the order dated 19-01-2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 18-11-2022


PETITIONER

SYED QAMAR ABBAS

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Syed Qamar Abbas, Environmentalist (BPS-18), Irrigation Department, Khyber Pakhtunkhwa, do hereby solemnly affirm that the contents of this Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT

"A" - 3-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1006 /2019

Mr. Syed Qamar Abbas, Environmentalist (BPS-18),
Irrigation Department, Khyber Pakhtunkhwa

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1018

Dated 19/7/19

Appellant



VERSUS

- 1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary, Finance, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director, Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
- 6- The Accountant General, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY w.e.f
31-01-2003 FROM THE DATE ON WHICH THE APPELLANT
WAS APPOINTED TO THE POST OF ENVIRONMENTALIST
AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE STATUTORY
PERIOD OF NINETY DAYS**

19/7/19
1018

PRAYER:

That on acceptance of this appeal the appellant may kindly be allowed/granted pay fixation w.e.f 31-01-2003 i.e. from the date on which the appellant was appointed as Environmentalist by counting the previous contractual service towards regular service. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

Resubmitted to day
19/7/19

R/SHEWETH:
ON FACTS:

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**Brief facts giving rise to the present appeal are as
under:**

- 1- That the appellant was initially appointed vide order dated 31.01.2003 as Environmentalist on contract basis under the scheme of "Strengthening of Monitoring and Evaluation Capabilities of Planning Cell in Irrigation and Power Department. (Copy of the appointment order is attached as annexure.....A).

-4-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1006/2019

Date of Institution ... 19.07.2019

Date of Decision ... 19.01.2022



Mr. Sved Qamar Abbas, Environmentalist (BPS-18) Irrigation Department, Khyber Pakhtunkhwa. ... (Appellant)

VERSUS

The Chief Secretary Khyber Pakhtunkhwa, Peshawar and others. ... (Respondents)

Nonr Muhammad Khattak
Advocate ... For appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

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

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant was initially appointed as Environmentalist on contract basis in Irrigation Department vide order dated 31-01-2003. Services of the appellant were regularized through an Act on 25-04-2017 from the date of commencement of the Act, i.e. 13-03-2017. As per Finance Division Notification dated 07-04-2015, pay of the contract employees on their regularization will be protected and in light of the finance division notification, the appellant filed departmental appeal for counting his previous service and pay fixation before the respondents, which was not responded, hence the instant service appeal with prayers that the appellant may be allowed/granted pay fixation with effect from 31-01-2003 i.e. the date on

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal

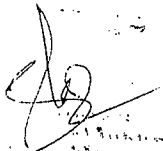
which the appellant was appointed as Environmentalist by counting his previous contractual service towards regular service.

02. Learned counsel for the appellant has contended that by not fixing the pay of the appellant with effect from 31-01-2003 by the respondents is against law, facts and norms of natural justice, therefore not tenable and 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 the respondents acted in arbitrary and mala fide manner by not granting/allowing pay fixation to the appellant with effect from 31-01-2003; that similar nature cases has already been decided by the this august tribunal in service appeal No 318/2019 decided on 02-07-2010; whereby fixation of pay was granted from the date of initial appointment; that under the principle of consistency reported in judgment of Supreme Court of Pakistan in 2009 SCMR 1 and 1996 SCMR 1185, the appellant is fully entitled for the relief meted out to other employees of various departments; that by not counting the previous service of the appellant, the respondents violated Rule-2.3 of the West Pakistan Pension Rules, 1963.

03. Learned Deputy District Attorney for the respondents has contended that services of the appellant were regularized through regularization Act, 2017 from the date of its commencement i.e. 13-03-2017 and not from initial appointment; that the policy of federal government is not applicable in the province, hence he was not regularized from the date of his first appointment; that departmental appeal of the appellant is not traceable in the department, hence no action was taken to this effect.

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

05. Record reveals that the appellant was initially appointed as Environmentalist on contract basis under the scheme of Strengthening of

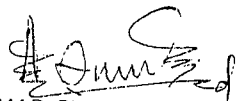


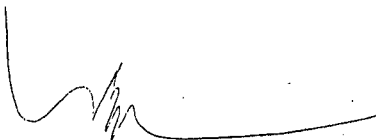
-6-

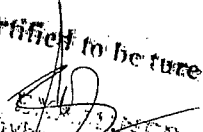
Monitoring and Evaluation Capabilities of Planning Cell in Irrigation & Power Department vide order dated 31-01-2003. Employees of the above mentioned scheme including the appellant were regularized through the Khyber Pakhtunkhwa Planning & Monitoring Cell, Irrigation Employees (Regularization of Services) Act, 2017 dated 13-03-2017. In light of provision of the Act, a notification dated 24-04-2017 was issued through which services of the appellant alongwith other employees were regularized from the date of commencement of the Act. The appellant invoked the jurisdiction of Finance Division Notification dated 25-04-2017, which has clearly allowed pay protection of contract employees whose service has been regularized through an Act. The provincial government vide notification dated 18-03-2021 have also issued a notification in pursuance of the Federal Government notification and allowed pay protection to such employees.

36. In view of the situation, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
19.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 26/4/22
Number of Words 16000
Copying Fee 510/-
Urgent 5/2
Total 211
Name of Applicant _____
Date of Completion of Copy 26/4/22
Date of Delivery of Copy 26/5/22

"B" - 7-



**GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT**

Subject: PAY FIXATION/PROTECTION

It is submitted that the undersigned had appointed as Environmentalist (BS-16) in the Planning & Monitoring Cell of Irrigation Department on 31-01-2003 on contract basis. Later on in the year March 2017 the services of undersigned were regularized through an Act passed by Provincial Assembly. But the undersigned has not been given any pay fixation/protection due to which the undersigned lodged an appeal in Service Tribunal for pay fixation and counting of previous contractual service. The Court gave relief to the undersigned by allowing/giving pay fixation from date of my initial appointment i.e. 31-01-2003 (F/A).

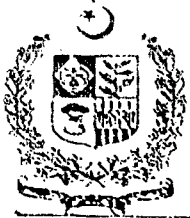
In light of the above court decision my pay fixation be carried out and forwarded to AG office accordingly.

(Signature)
23/08/2022
(Syed Qamar Abbas)
Chief Coordination

OS (Admin) P&D Deptt:

So (Lit)

(Signature)
23/08/2022



Office of the
Accountant General

Khyber Pakhtunkhwa, Fort Road, Peshawar
Ph # 091-9211763

-8-

No. 424/ Promotion Fixation / 119
DAG (IAD) / 2022-23 /

Dated: 26 10-2022

To

The Secretary Finance
Khyber Pakhtunkhwa,
Peshawar.

Subject: - **PAY PROTECTION IN RESPECT OF MR. SYED QAMAR ABBAS ENVIRONMENTALIST (BPS-18) IRRIGATION DEPARTMENT.**

Respected Sir,

The undersigned is directed to refer court decision regarding the pay protection of Mr. Syed Qamar Abbas currently working as Chief Coordination P& D department. The court decided the case in his favour for protection of pay on 19-01-2022 (Court Decision attach as a ready reference).

2. It is to bring into your kind notice that your office Letter No. FD (SOSR-1) 12-4/2019-20 dated 02-03-2020 Wherein it was specifically stated that the employees appointed on fix pay basis and in receipt of 5% increment are not entitle to pay protection in light of finance department letter No. FD (SOSR-1) 12-7 /2014I dated 06-02-2014.

3. It is pertinent to mention here that being a policy /Administrative matter this office may kindly guided as how to proceed with the pay protection involved in the instant case submitted after court decision to this office.

Your kind co-operation in this regard shall be highly appreciated.

Muhammad Fayaz Afridi
o/c (Muhammad Fayaz Afridi)
Deputy Accountant General

-9-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 2022

Syed Qarnar Abbass

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Immigration Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Retirees

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. ____/____/202



CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

(BC-10-0853)

(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

&

**MUHAMMAD AYUB
ADVOCATES**

OFFICE:

Flat No. (TF) 291*-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)