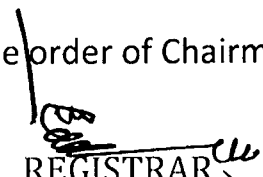


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 689/2022

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 Maqsood Ahmad submitted by him. It is fixed for implementation report before touring Single Bench at A.Abad 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Execution Petition no. 689/2022

CM No. ____/2022

In the matter of

Service Appeal No. 1726/2019

Decided on 02.12.2021

Maqsood Ahmed Appellant / Applicant

VERSUS

Director E&SE KPK & others Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-3
2.	Affidavit		4
3.	Copy of the Judgment and Order dated 02.12.2021	A	5-10
4.	Copy of Letters	B	11-12

Maqsood Ahmed
Appellant / Applicant
In person

MAQSOOD AHMED
PSHT (BPS-15) GPS
Sumbal Dara Abbottabad
CNIC # 13101-0936474-5
Cell # 0310-5820209

①

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Execution Petition No. 689/2022

CM No. _____/2022

In the matter of

Service Appeal No. 1726/2019

Decided on 02.12.2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2006

Dated 22/11/2022

Maqsood Ahmed (PSHT) Govt Primary School Sumbal Dara,
Havelia, District Abbottabad

..... **Appellant / Applicant**

VERSUS

1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M), Abbottabad.

..... **Respondents**

APPLICATION FOR THE IMPLEMENTATION OF
THE JUDGMENT AND ORDER DATED
02.12.2021 IN THE CAPTIONED SERVICE
APPEAL OF THIS HON'BLE TRIBUNAL


Respectfully Sheweth:

1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 02.12.2021.
2. That vide judgment and order dated 02.12.2021 this Hon'ble Tribunal allowed the appeal and the grievance of the Appellant was redressed in the said Appeal and the impugned order of the Respondents were set aside and the Appellant was became entitled to all consequential benefits i.e Promotion to the Higher Rank. **(Copy of the Judgment and Order dated 02.12.2021 is attached as Annexure A)**

3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Appellant vide various Applications for implementation. Thereafter the Appellant is continuously approaching the Respondents for the implementation of the Judgment and Order dated 02.12.2021, however they are reluctant to implement the same.
4. That thereafter the Appellant filed Execution Petition No. 167/2022 before this Hon'ble Tribunal for execution of the order dated 02.12.2021 with letter and spirit, during the proceedings of the execution Petition the Respondents submitted two implementation reports first on 13.06.2022 according to which the Appellant was promoted against the vacant post of SPST (BPS-14) w.e.f 18.05.2021 and second implementation report was submitted on 15.06.2022 according to which the Appellant was promoted to PSHT (BPS-15) w.e.f 14.06.2022.
5. It is pertinent to mention here that at the time of filing of Service Appeal for promotion of the Appellant, the Appellant was already serving as SPST BPS-14 and the Respondents had malafidely submitted the previous promotion order.
6. That the Respondents further held that the working paper for promotion to BPS-16 of the Appellant were prepared and submitted before the competent authority i.e Respondent No 1 & 2, which is still pending.
7. That thereafter the submission of the Implementation reports, this Hon'ble Tribunal disposed off the execution petition vide order dated 16.06.2022.
8. That after disposal of the execution petition, the Respondent No 1 issued letter dated 22.07.2022 to the Respondent No 2 for DPC in person along with all relevant record, but in vain, thereafter the Respondent No 1 again issued letter dated 06.09.2022 with the same subject but the Respondent No 2 is reluctant to approach the office of the Respondent No 1 for DPC in person along with record. **(Copy of Letters are attached as annexure B)**

9. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 02.12.2021 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents.
10. That the valuable rights of the Appellant are involved in the instant case and the Respondents are violating the legal and fundamental rights of the Appellant by not promoting the Appellant to the Higher Rank i.e BPS-16.
11. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

On acceptance of this Application, the Order and Judgment dated 02.12.2021 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit. And the Respondents may graciously be directed to promote the Appellant in BPS-16 with all back benefits.


Appellant / Applicant
In person

MAQSOOD AHMED
PSHT (BPS-15) GPS
Sumbal Dara Abbottabad
CNIC # 13101-0936474-5
Cell # 0310-5820209

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

CM No. ____/2022

In the matter of

Service Appeal No. 1726/2019

Decided on 02.12.2021

Maqsood Ahmed Appellant / Applicant

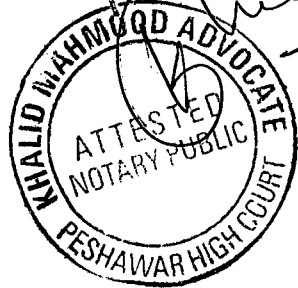
VERSUS

Director E&SE KPK & others Respondents

AFFIDAVIT

I, Maqsood Ahmed (PSHT) Govt Primary School Sumbal Dara, Havelia, District Abbottabad, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

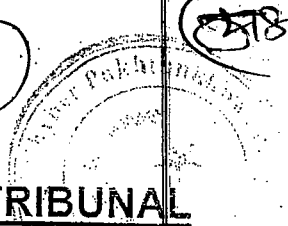
Maqsood Ahmed
6-9-22



Maqsood Ahmed
DEPONENT

A'

(S)



BEFORE THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD

Service Appeal No: 1726 / 2019

Maqsood Ahmed (PST) Govt Primary School Muslim Town, Circle
Abbottabad, Tehsil & District, Abbottabad,

Khyber Pakhtunkhwa
Service Tribunal
....APPELLANT

Diary No. 1692

Versus Date: 28/11/2019

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Peshawar.
2. Director of Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Elementary & Secondary Education) (Male), Abbottabad.

....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
 IMPUGNED ORDER DATED 10/07/2019 ISSUED UNDER
 ENDORSEMENT NO 7775-79 WHEREBY RESPONDENT NO 3
 IMPOSED MINOR PENALTY OF "WITHHOLDING OF
 PROMOTION FOR PERIOD OF 03 YEARS" UPON APPELLANT.
 THE SAID ORDER IS TOTALLY AGAINST LAW, WITHOUT
 JURISDICTION, MALAFIDY AND NO REGULAR INQUIRY HAS
 BEEN CONDUCTED AGAINST THE APPELLANT.

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Abbottabad

28/11/19
 Re-submitted to-day
 and filed.
 10/12/19

6 (217)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1726/2019

Date of Institution ... 28.11.2019

Date of Decision ... 02.12.2021



Maqsood Ahmed (PST) Government Primary School Muslim Town,
Circle Abbottabad, Tehsil & District, Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education Department Peshawar and two
others.

... (Respondents)

MR. MAQSOOD AHMED,
Appellant

Pro-se

MR. RIAZ AHMED PAINDAKHEL,
Assistant Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant while serving as PST at GPS Surjal was proceeded against on the allegations of inefficiency, misconduct as well as habitual absence and as a consequence of findings of the inquiry committee, minor punishment in the shape of withholding of promotion for three years as well as recovery of an amount of Rs. 300438/- was awarded to the appellant vide order dated 21.05.2013. The same was challenged by the appellant through filing of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal bearing No. 1252/2013, which was decided vide judgment dated 16.02.2016, whereby the penalty awarded to the appellant was set-aside and the respondents were directed to conduct proper inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It was during the inquiry proceedings that ASDEO Circle Sherwan informed SDEO (Male) Abbottabad through letter dated 01.07.2016 that the appellant has refused to receive letter No. 5334 dated 23.06.2016 as well as letter No. 5415-18 dated 27.06.2016 addressed to the appellant, where-upon District Education Officer (Male) Abbottabad appointed Sub-Divisional Education Officer (Male) Abbottabad for inquiry into the alleged refusal of receiving of the aforementioned letter by the appellant. On conclusion of the inquiry, competent Authority awarded minor penalty of withholding of promotion for a period of three years to the appellant, which was challenged by the appellant through filing of Service Appeal bearing No. 313/2017, which was allowed by this Tribunal vide judgment dated 19.02.2019 by setting-aside the impugned order with the direction to respondents to conduct de-novo inquiry strictly in accordance with law within a period of 90 days. On conclusion of the de-novo inquiry, the appellant was again awarded minor penalty of withholding of promotion for a period of three years vide order dated 10.07.2019. The departmental appeal of the appellant was rejected on 26.09.2019, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. The appellant argued that he had not at all refused the receiving of the concerned letters, however the concerned ASDEO submitted false information to the District Education Officer (Male) Abbottabad by alleging that the appellant had refused to receive the letters sent by District Education Officer (Male) Abbottabad. He further contended that this fact has

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

even proved during the inquiry that the letters were not only received by the appellant, rather its replies were also submitted by him to the competent Authority. He further argued that the inquiry committee was biased against the appellant and neither his statement was recorded during the inquiry nor he was provided any opportunity to produce evidence in his defense. He further contended that the inquiry proceedings were conducted in sheer violation of relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, the impugned order is liable to be set aside.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant had refused to receive letters issued to him by District Education Officer (Male) Abbottabad, which was blatant violation of service discipline and comes within the ambit of misconduct. He further argued that a regular inquiry was conducted in the matter and the allegations against the appellant stood proved, therefore, he was rightly awarded minor penalty of withholding of promotion for a period of three years.

5. Arguments heard and record perused.

6. A perusal of the record would show that a committee comprising of Mr. Tariq Samar, Principal GHS No. 4 Abbottabad and Mr. Ikram-ul-Haq, Principal GHS Takia Sheikhan was constituted for de-novo inquiry against the appellant. While going through findings of the inquiry committee, it is crystal clear that the only allegation considered by the inquiry committee for probe was that as per report of ASDEO Circle Sherwan, the appellant had refused to receive letter No. 5334 dated 23.06.2016 as well as letter No. 5415-18 dated 27.06.2016 addressed to the appellant by District Education Officer (Male) Abbottabad. It is evident from the record that it was during the proceedings of another inquiry carried against the appellant on certain allegations that letter No. 5334 dated 23.06.2016 as well as letter No. 5415-18 dated 27.06.2016 were issued by District

ATTESTED

CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Education Officer (Male) Abbottabad to the appellant. On 01.07.2016, the then ASDEO Circle Sherwan wrote letter to SDEO (Male) Abbottabad, alleging therein that the appellant had refused to receive the above mentioned letters. It was in this backdrop that an inquiry was initiated against the appellant by considering his alleged act of refusal of receiving of letters as in-subordination and misconduct. Chanzeb SDEO (Male) Abbottabad, the then ASDEO Circle Sherwan was examined as witness during the inquiry, who has stated that the appellant refused to receive the show-cause notice, therefore, the same was handed over to Head Teacher Gulzar Ahmed, however he then also wrote to Chanzeb that the appellant has refused to receive the show-cause notice. On the other hand, aforementioned Head teacher namely Gulzar Ahmed has stated in his statement that the appellant initially refused to receive show-cause notices, however after about one and half hours, the appellant received the show-cause notices and the ASDEO Circle Sherwan was informed by him in this respect personally. The statement of head teacher namely Gulzar Ahmed clearly shows that the letters were received by the appellant. Moreover, it is not understandable as to what were the reasons, which prompted Chanzeb, the then ASDEO Circle Sherwan, to personally serve the letters upon the appellant, when nothing is available on the record which could show that any such directions were issued to him by his high-ups.

7. The appellant has alleged that his statement was not recorded during the inquiry and he was not afforded any opportunity of producing evidence in his defense. The available record supports the contention of the appellant. The aforementioned fact has created material dent in the inquiry proceedings and has caused prejudice to the appellant. In view of material available on record, the impugned order is not sustainable in the eye of law and is liable to be set-aside.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant

ATTESTED
 JUDGE
 Service Tribunal
 Peshawar

is held entitled to all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.12.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

(AHMAD SULTAN TAREEN)
CHAIRMAN
CAMP COURT ABBOTTABAD

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22/02/2022
Number of Words 2400
Copying Fee 26/-
Urgent 4/-
Total 30/-
Name of Copied -
Date of Collection of Copy 22/02/2022
Date of Delivery of Copy 22/02/2022



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.**

No 96 /F.No. 117/SST (M)/ Promotion -Abbottabad

Dated Peshawar the 22/07 /2022

Phone: 091-9225344

Email: estabshmentmale1@gmail.com

'B'

11

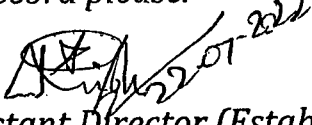
To

The District Education Officer,
(Male) Abbottabad.

Subject: - **PROMOTION IN R/O MAQSOOD AHMAD PSHT**

Memo:

I am directed to refer to your letter No. 3516 dated 14-06-2022 on the subject cited above, and to ask you to attend this office on 25-07-2022 for DPC in person along with, all relevant record please.


Assistant Director (Estab- M1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. _____

Copy of the above is to:-

1. PA to Director (E&SE) Local Directorate.

Assistant Director (Estab-M1)
Elementary & Secondary Education
Khyber Pakhtunkhwa



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 1379 /F.No. 117/SST (M)/ Promotion -Abbottabad

Phone: 091-9225344

Dated Peshawar the 06-09 /2022
Email: estabshmentmale1@gmail.com

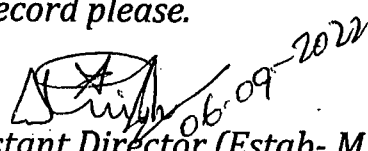
REMINDER 1ST

To

The District Education Officer,
(Male) Abbottabad.

Subject: - **PROMOTION IN R/O MAQSOOD AHMAD PSHT**
Memo:

I am directed to refer to your letter No. 3516 dated 14-06-2022 on the subject cited above, and to ask you to attend this office on 14-09-2022 for DPC in person along with, all relevant record please.


Assistant Director (Estab- M1)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. _____

Copy of the above is to:-

1. PA to Director (E&SE) Local Directorate.

Assistant Director (Estab-M1)
Elementary & Secondary Education
Khyber Pakhtunkhwa