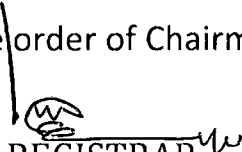


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 696/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.11.2022	<p>The execution petition of Mr. Mumtaz Khan 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>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 696 /2022

In

Appeal No.1058/2014

MUMTAZ KHAN

VS

EDUCATION DEPTT:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	1-2
2.	Judgment/Order dated 14.01.2022	"A"	3-9
3.	Vakalatnama		10

PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 696 /2022

In

Appeal No.1058/2014

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 2059
Date: 25/11/2022

Mr. Mumtaz Khan SST, Government High School,
Tatar Khel, District Karak

.....**PETITIONER**

VERSUS

- 1- The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Secretary Education (E&SE) Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 3- The Director Education (E&SE), Government of Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer (E&SE), District Karak.

..... **RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENTS TO OBEY THE JUDGMENT DATED
14.01.2022 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed Service Appeal bearing No. 1058/2014 before this August Service Tribunal for Granting selection Grade from the date of appellant's regular entry into service.
- 2- That the appeal of the petitioner was heard and the appellate authority is directed as follows "***Record would suggest that SET Technical, who were colleagues or junior of the appellant had availed the benefits selection grade and move-over but the same benefits were refused to the appellant, thus discriminated him, which however was not warranted. The respondents were required to treat them equally being one cadre, but making separate seniority lists and extending benefits to one group, while depriving the other groups from such benefits is not allowable under the law. In***

view of the foregoing discussion, the instant appeal as well as the connecting service appeals are accepted as prayed for. Parties are left to bear their own costs." Copy of the judgment dated 14-01-2022 is attached as annexure **A.**

- 3- That after obtaining copy of the judgment dated 14-01-2022, 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 14-01-2022 in letter and spirit.
- 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 14-01-2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 22-11-2022

PETITIONER
[Signature]
MUMTAZ KHAN

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

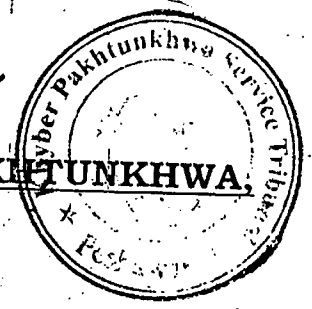
AFFIDAVIT

I Mr. Mumtaz Khan SST, Government High School, Tatar Khel, District Karak, 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.



[Signature]
DEPONENT

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



"A"-3-

Amended Appeal No. 1058 / 2014

Mumtaz Khan SST, Government High School Tatar Khel
District Karak.....(Appellant)

VERSUS

**N.W.F. Province
Service Tribunal
Diary No. 911
dated 31-7-2014**

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Education (E&SE) Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director Education (E&SE) Government of Khyber Pakhtunkhwa, Dabgari Garden, Peshawar.
4. The District Education Officer (E&SE) District Karak.....(Respondents)

AMENDED APPEAL

**APPEAL U/S 4 OF THE N.W.F.P (KHYBER
PAKHTUNKHWA) SERVICE TRIBUNAL ACT 1974
AGAINST THE DENIAL OF RESPONDENTS OF NON
GRANTING SELECTION GRADE FROM THE DATE
OF APPELLANT'S REGULAR ENTRY INTO
SERVICE AND AGAINST WHICH HE FILLED
DEPARTMENTAL APPEAL WHICH STILL
PENDING WITHOUT DISPOSAL.**

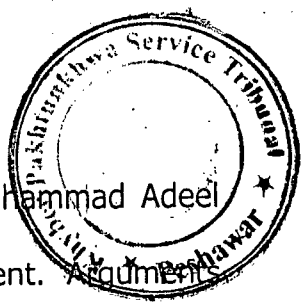
31/7/14

re-submitted to-day
d filed:
31/8/14

ATTESTED

[Signature]
**EXAMINER
Khyber P.
Service Tribunal
Peshawar**

-4-

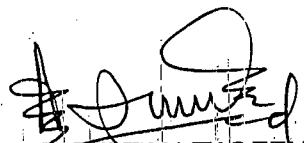


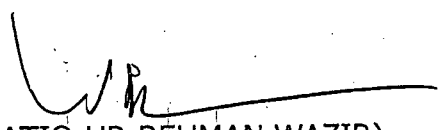
ORDER
14.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

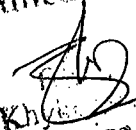
Vide our detailed judgment of today, Passed in service appeal bearing No. 1427/2011 "titled Manzoor Elahi Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and three others", the instant service appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Date of Presentation of Application	07/3/22
Number	800
C	10/-
U	10/-
T	10/-
N	
D. (Date of Copy)	09/3/22
Date of Delivery of Copy	09/3/22

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

M

-5-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1427/2011

Date of Institution ... 05.08.2011

Date of Decision .. 14.01.2022



Mr. Manzoor Elahi, Headmaster (BPS-17), GHS Kag, District Haripur
... (Appellant)

VERSUS

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

Noor Muhammad Khattak
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

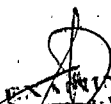
AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

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 No. 679/2012 titled Abdus Samad
2. Service Appeal No. 680/2012 titled Hamidullah
3. Service Appeal No. 681/2012 titled Rahim Shah
4. Service Appeal No. 406/2013 titled Gul Chaman
5. Service Appeal No. 407/2013 titled Javid Khan
6. Service Appeal No. 408/2013 titled Anwar Saeed
7. Service Appeal No. 409/2013 titled Khaliq Dad


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-6-

8. Service Appeal No. 410/2013 titled Abdur Rashid
9. Service Appeal No. 411/2013 titled Mohammad Dawood
10. Service Appeal No. 412/2013 titled Mohammad Humayun
11. Service Appeal No. 413/2013 titled Mian Fareed
12. Service Appeal No. 463/2013 titled Suleman Shah
13. Service Appeal No. 483/2013 titled Fazal Akbar
14. Service Appeal No. 1058/2014 titled Mumtaz Khan
15. Service Appeal No. 1107/2016 titled Attaullah Jan
16. Service Appeal No. 1375/2011 titled Jan Muhammad
17. Service Appeal No. 1428/2011 titled Fida Mohammad
18. Service Appeal No. 1429/2011 titled Faiz Mohammad
19. Service Appeal No. 1430/2011 titled Shafqat Zaman
20. Service Appeal No. 1431/2011 titled Mohammad Arif
21. Service Appeal No. 1432/2011 titled Ahsan Shah
22. Service Appeal No. 1441/2011 titled Mohammad Riaz
23. Service Appeal No. 1442/2011 titled Haq Nawaz

02. Brief facts of the case are that the appellant was appointed as SET in Education Department vide order dated 22-10-1987. Later on the appellant as well as his other colleagues (Technical & General) were adjusted against the post of SET vide order 25-03-1989 enjoying the same cadre and equal benefits. A joint seniority of SET General and Technical was drawn according to seniority position of the occupants. Later on a separate seniority list of SET Technical was issued, who availed the benefits of move-over and selection grade vide order dated 16-01-2008 and 21-03-2009, but the SET General with separate seniority list, were kept deprived of such benefits. On the request of SET Technical, the seniority already separated was again clubbed and joint seniority list was issued. Though the SET General and Technical belong to one cadre but due to move over and


APPEALS

 MEMBER
 Selection Department

selection grade granted to SET Technical, some of the teachers elevated to BPS-18 but the appellant, being SET General, was recently promoted to BPS-17. Feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period, hence the present appeal with prayers that the appellant may be granted the benefits of move-over by treating him at par with his other colleagues.


03. Learned counsel for the appellant has contended that not granting the benefits of move-over and selection grade to the appellant is against law and norms of natural justice; that the same benefits were allowed to other colleagues (SET Technical) of the appellant, but the same was not granted to the appellant, which amounts to discrimination; that the appellant has not been treated in accordance with law and rules on the subject and the respondents acted in violation of Article-4 and 25 of the Constitution; that the appellant was duly entitled for the benefits of move-over and selection grade but the appellant has been unlawfully deprived of his due right.

04. Learned Additional Advocate General for the respondents has contended that SET Technical and SET General being separate cadres were holding separate seniority list and on the basis of separate seniority list, the SET Technical availed the benefits of move-over and selection grade; that joint seniority list of SET Technical and SET General was issued 02-07-2010; that the SET Technical availed such benefits until 1991, whereas the SET General availed such benefits until 1986, while the government has discontinued selection grade with effect from 01-12-2001; that the appellant is not entitled to move-over or selection grade according to law and norms of natural justice.

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

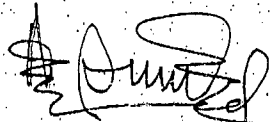
ATTESTED

EXAMINER
M. K. B. K. S. W. D.

06. Record reveals that vide order dated 22-10-1987, the appellant as well as his other colleagues i.e. SET Technical were appointed through a joint order. Record would suggest that SET Technical and General belong to one cadre and initially a joint seniority list was maintained, but later on due to reasons best known to the respondents, the respondents issued separate seniority lists, thus making them separate cadres. Record is silent as to what were the grounds for maintaining separate seniority, either in compliance of service rules or any administrative order, but it otherwise was illegal keeping two lists in one cadre. The last separate seniority list in respect of SET Technical was issued in 2007 and based on such seniority list, SET Technical were granted selection grade from BPS-15 to 17 with effect from the dates of their appointments vide order dated 16-01-2008, including the names of those SET Technical, who were appointed alongwith the appellant in a joint appointment order dated 22-10-1987. Similarly vide another order dated 21-03-2009, move over was granted from BPS-16 to 17 and BPS-17 to 18 to SET Technical with effect from the dates of their appointments, containing the names of officials, who were junior to the appellant. In the meanwhile, joint seniority list of SET Technical and General was issued on 30-06-2010 upon intervention of the High Court in writ petition No 870/2010 vide judgment dated 05-03-2010, which would show that separate seniority lists issued so far, were illegal. Record would suggest that SET Technical, who were colleagues or junior of the appellant had availed the benefits selection grade and move-over but the same benefits were refused to the appellant, thus discriminated him, which however was not warranted. The respondents were required to treat them equally being one cadre, but making separate seniority lists and extending benefits to one group, while depriving the other groups from such benefits is not allowable under the law.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

07. In view of the foregoing discussion, the instant appeal as well as the connecting service appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 27/3/22
 Number of Words 2000
 Copying Fee 2/-
 Amount 2/-
 Total 2/-
 Name of Copyist -
 Date of Completion of Copy 09/3/22
 Date of Delivery of Copy 09/3/22

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-10-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution.

APPEAL NO: _____ OF 20 22

Mumtaz Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt & others.

(RESPONDENT)
(DEFENDANT)

I/WE (Appellant)

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. _____/_____/2022

(Signature)
CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

(BC-10-0853)

(15401-0705985-5)

(Signature)
UMAR FAROOQ MOHMAND

(Signature)
WALEED ADNAN

&

(Signature)
**MUHAMMAD AYUB
ADVOCATES**

OFFICE:

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