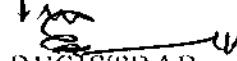


Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. **01/2023**

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.01.2023	<p>The application for restoration of Execution Petition No. 326/2021 submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for hearing before Single Bench at Peshawar on . Original file be requisitioned. Notices be issued to applicant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE K.P SERVICE TRIBUNAL, PESHAWAR.

SCANNED
KPST
Peshawar

Restoration Appli no-1/2023

C.M No: _____/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2620

In

Execution petition no. 326/2021

Dated 2/1/23

Syed Musadiq Shah

vs

Govt Of KP

**SUBJECT: APPLICATION FOR RESTORATION OF EXECUTION
PETITIONS NO.326/2021 WHICH WAS CONVERTED VIDE
ORDER DATED 21/10/2021 FROM SERVICE APPEAL NO.
1184/2019.**

RESPECTFULLY SHEWETH :-

1. That the service appeal of the appellant was converted in to execution petition vide order dated 21/10/2021 and the instant Execution Petition was disposed-off vide detail order dated 02/02/2022 with the permission to petitioner that he has liberty to seeks restoration, if this order is not complied with in due course. **Copy of order is attached as annexure-A.**
2. That thereafter, appellant filed application to department for compliance of the order dated 02/02/2022 but deptt till date no action taken on the same.
3. That the department also discriminating the applicant because other employee vide order dated 06/09/2022 adjusted in civil secretariat on conditional basis but the applicant even not adjusted on conditional basis which is malafide on the part of the deptt: **copy of order is attached as annexure-B.**

2

4. That the applicant there is no other remedy, therefore, applicant file application for restoration of execution petition.

It is , therefore, most humbly requested that on acceptance of this application the execution petition No. 326/2021 may be restored .Any other remedy which tribunal , deems fit & appropriate may also be awarded to petitioner .


APPLICANT

Syed Musadiq Shah

Through:


(SYED NOMAN ALI BUKHARI)

Advocate High Court
Peshawar.

AFFIDAVIT

It is affirmed and declared that the contents of application are true and correct to the best of my knowledge and belief.




DEPONENT

(P) A (3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution Petition No. 326/2021
Appeal No. 1184/2019

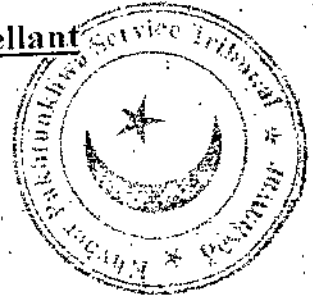
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 300

Dated 25/9/2019

Mr. Syed Musadiq Shah, Junior Clerk,
Estate Office, Administration Deptt;

.....Appellant



Appeal is converted into
Execution petition vide
order dt. 21-10-2021.

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary Establishment, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. The Secretary Administration, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. Raza Muhammad Junior Clerk Khyber Pakhtunkhwa House Islamabad.

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST THE IMPUGNED SENIORITY LIST DATED 27-06-
2019, WHEREBY BY THE SEPARATE SENIORITY LIST WAS
PREPARED FOR THE APPELLANT AND AGAINST THE
REJECTION ORDER DATED 26.08.2019 WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN
REJECTED FOR NO GOOD GROUNDS.

Filed to-day

Registrar

27/9/19

PRAYER:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED
SENIORITY LIST DATED 27-06-2019 MAY PLEASE BE SET
ASIDE BEING NO VALUE/MEANING LESS AND
DISCRIMINATORY BECAUSE THERE IS NO CHANNEL OF
PROMOTION AND THE APPELLANT MAY BE INCLUDED
IN THE SENIORITY MAINTAINED BY THE
ESTABLISHMENT DEPARTMENT FOR CIVIL
SECRETARIAT EMPLOYEES AT HIS PROPER PLACE
WHEREIN OTHER EMPLOYEES OF ADMINISTRATION

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 326/2021

Date of Decision 02.02.2022

Syed Musadiq Shah, Junior Clerk, Estate Office, Administration
Department.

VERSUS

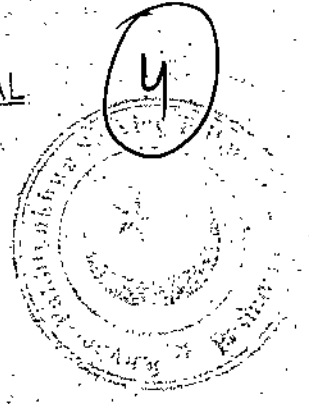
The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat
Peshawar and three others.

ORDER

Learned counsel for the petitioner present. Mr. Mukarram Khan, Section Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

2. Arguments have been heard and record has been perused.

3. The petitioner is pursuing his case for placement of his name in an appropriate seniority with the submissions that he was appointed as Junior Clerk (BS-7) against an existing vacancy in erstwhile Frontier House (Pakhtunkhwa House) Islamabad by the Administration Department vide order dated 11.08.2008 bearing No. E&A(A.D)4(2)/2007. He joined the service in pursuance of the aforementioned appointment order. He during the course of his service, preferred Service Appeal No. 597/2016 on 07.06.2016 against the respondents including the Chief Secretary Khyber Pakhtunkhwa, Secretary Establishment Department and Secretary Administration Department of Khyber Pakhtunkhwa for enlistment of his name in the seniority list of Junior Clerks by the respondents. The said appeal was decided on 29.03.2019 vide judgment of the similar date with the observations in the operative part that the



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appellant is a civil servant and is entitled to a place in the seniority list to be drawn by the concerned department in accordance with law and rules and the appeal was allowed to that extent. It was additionally directed that the respondent No. 3 shall cause the preparation of requisite seniority list of appellant and others within a period of ninety days, if not already done so; and that the appellant shall be at liberty to pursue the legal remedy for his grievance arising out of the entries in the seniority list through appropriate proceedings. The Secretary, Administration Department was respondent No. 3 and said department prepared the seniority list on 15.05.2019 in which the name of two Junior Clerks including the present petitioner were placed as Junior Clerk of Household Staff. The said seniority list was communicated to the petitioner by the Administration Department vide letter No. E&A(AD)2(591)2008 dated 28.06.2019. After exhausting the departmental remedy, the petitioner filed Service Appeal No. 1184/2019 before the Tribunal to challenge the said seniority list.

4. The respondents were served with notices of the appeal and they filed their para-wise comments. They admitted in reply of para-1 of the facts that the appellant was appointed by Administration Wing of Establishment & Administration Department as Junior Clerk on 11.08.2008 in Pakhtunkhwa House [erstwhile Frontier House] Islamabad. They added to clarify that as per Khyber Pakhtunkhwa Rules of Business, 1985, Establishment & Administration Department is a single Administrative Department of Civil Secretariat, Peshawar but operationally it comprises of two wings/parts i.e. Administration Wing & Establishment Wing, each wing is separately headed by an Administrative Secretary. It was further added that due to their distinct operational setup,

Administration Wing and Establishment Wing are sometimes also referred to/called as "Administration Department" and "Establishment Department" respectively. In reply to para-3 of the said appeal, it was asserted by respondents that seniority list of Junior Clerks referred to by the appellant has been circulated by the Establishment Wing of E&A Department but the appellant is a Household employee of the Administrative Wing of the E&A. Hence, he has got no right over that seniority. In reply to para-4 of the facts, the respondents stated that request of the appellant for inclusion of his name in the seniority list was processed and regretted being not covered under the rules, with advice to Administration Wing of E&A Department to find out a way for further career progression of the Household Staff. The respondents also admitted the judgment dated 29.03.2019 at credit of the appellant with clarification that the Tribunal had allowed earlier appeal of the appellant to the extent that he being civil servant is entitled to a place in seniority to be caused by respondent No. 3 i.e. Secretary Administration and not Secretary Establishment. The needful in this regard has already been done by Administration Wing of E&A Department.

5. Apropos to the foregoing facts, it is pertinent to point out that the subsequent Service Appeal No. 1184/2019 preferred by the appellant was converted into Execution Petition as evident from the order dated 21.10.2021 on file. So, this order is meant to decide the question whether seniority list dated 15.05.2029 as issued by the Administration Department including name of the petitioner and that of respondent No. 4 stands to satisfy the judgment dated 29.03.2019 in Service Appeal No. 597/2016 in its letter and spirit. Respective factual stance of each party has been noted herein

above in this order. Accordingly, it is assertion of the respondents that direction in the judgment dated 29.03.2019 passed in Service Appeal No. 597/2016 was for the concerned department which in case of the petitioner is the Administration Department, who by issuing the seniority list comprising the petitioner and respondent No. 4 has complied with the judgment dated 29.03.2019. On the other hand, the petitioner submits that instead of causing the seniority as asserted by the respondents, the name of the petitioner should have been included in the seniority list of Establishment Department like other similarly placed officials as evident from the minutes dated 08.05.2018 and subsequent precedents.

6. It is noteworthy that there is no dispute as to the appointment of petitioner as Junior Clerk having been made by the Administration Department in Pakhtunkhwa House vide order dated 11.08.2008 bearing No. E&A(A.D)4(2)/2007 of even date. The denial of respondents to treat the petitioner at par with junior clerks of the Secretariat Departments can be better spelt out from their added view in reply to para-2 of the appeal now converted into execution petition. They thereby explained that the petitioner had already been treated under Sub Section (2) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which postulates that seniority of Civil Servant shall be reckoned in relation to other Civil Servants belonging to the same service or cadre while the petitioner was appointed as Household Employee under Rule 10 (2) of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989 against post of junior clerk exclusively for a particular entity i.e. Houses, without observing some parts of the criteria required for filling the post of junior clerk such as zonal quota and advertisement in two newspapers etc. With

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the given explanation, the respondents asserted that seniority of the petitioner will be maintained along with other employees of the Houses in Administration Wing of E&A Department being their parent entity but not in Establishment part of E&A Department. The said explanation and assertion of the respondents underpins two points: One that the petitioner by virtue of his appointment holds the post of junior clerk exclusively meant for Houses under control of Administration Department which does not make part of the service/cadre of junior clerks holding such post in Departments of Provincial Civil Secretariat; and second that appointment of the petitioner as junior clerk in Pakhtunkhwa House was made with exceptions provided under Rule 10 (2) cited above. In order to settle the point whether the post held by the petitioner as Junior Clerk is a separate cadre or otherwise it makes part of the cadre of junior clerks of a Secretariat Department, the admitted control of the Houses by Administration Department is workable as determinative factor. The Khyber Pakhtunkhwa Province Government Rules of Business, 1985 define the "Department" as a self-contained administrative unit in the Secretariat responsible for the conduct of business of Government in a distinct and specified sphere, and declared as such by the Government. Attached Department means a Department mentioned in column 3 of Schedule-I which in fact is the attached Department of a Secretariat Department. Needless to say that according to list of the secretariat departments given in 1st schedule of the said Rules of Business, Establishment & Administration Department is a combined unit with specified common business. So, plea of the respondents as to individuality of the Administration Department distinct from the Establishment Department is not acceptable in light of the

Prakash

[Signature]

Government Rules of Business. The Houses have not been specifically dealt with for the purpose of responsibility of the Establishment & Administration Department. Rather the Estate Office is enumerated among the business of said department. It is an open secret that management of the Houses rests with the Estate Office directly under control of E&A Department in the Khyber Pakhtunkhwa Civil Secretariat. Thus, all posts in the Estate Office or in the Houses make part of the service of the Khyber Pakhtunkhwa Civil Secretariat. The post of junior clerk in the Estate Office or in the Houses is held as a cadre post for the purposes of notification dated 6th December, 2012 bearing No. SOE.IV(E&AD)/1-35/2012 of the Government of Khyber Pakhtunkhwa Establishment & Administration Department (Establishment Wing). Coming to the second point as to exceptions in appointment of petitioner, suffice it to say that they relate to the method of recruitment and cannot be pressed into service to exclude the petitioner from cadre of junior clerk when his holding of the said post with status as civil servant is admitted by the respondents.

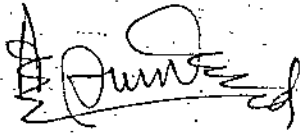
7. Coming to the crucial point of the seniority list circulated by the Administration Department including names of the petitioner and respondent No. 4 for the purpose of compliance with the judgment dated 29.03.2019 passed in Service Appeal No. 597/2016, it is observed that issuance of said list in the given manner is fruitless as far as satisfaction of said judgment is concerned. For proper satisfaction of said judgment of the Tribunal, respondents are directed to treat the post held by petitioner at par with the junior clerks in Khyber Pakhtunkhwa Civil Secretariat for which the reasons have already gone herein above. The Execution

10

Petition stands disposed of accordingly with liberty to the petitioner to seek its restoration, if this order is not complied with in due course. File be consigned to the record room.

ANNOUNCED
02.02.2022

Secretary
Sindh High Court
Karachi


(AHMAD SULTAN TAREEN)
CHAIRMAN

14/06/2022
3200
22-0
11-0
26-0
14-06-2022
14-06-2022

To

The Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department,
Peshawar.

Subject:

**REQUEST FOR COMPLIANCE OF THE ORDER DATED 02.02.2022 IN
EXECUTION PETITION NO. 326/2021 IN APPEAL NO. 1184/2019**

Respected Sir,

Please refer to the subject noted above and enclosed find herewith copy of decision of hon'ble Service Tribunal dated 02.02.2022 rendered in **Execution Petition No. 326/2021 in appeal No. 1184/2019 (converted into Execution Petition No. 326/2021 vide order dated 21.10.2021)**. The Applicant challenged the Seniority List of 02 Junior Clerks of Household staff issued by Administration Department in response to earlier order of Service Tribunal in Appeal No. 597/2016 dated 29.03.2019.

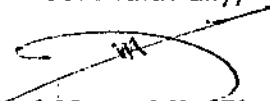
That the Honourable Tribunal directed the respondents vide order dated 02.02.2022, ***"to treat the post held by the petitioner at par with the junior Clerk in Khyber Pakhtunkhwa Civil Secretariat, Peshawar for which the reason have already gone herein above."***

In view of the decision of the hon'ble Tribunal, it is most reverently requested that name of the undersigned, being Civil Servant, be included in the Seniority List maintained by the **Establishment Department, Khyber Pakhtunkhwa** for the Junior Clerks of Khyber Pakhtunkhwa Civil Secretariat **from the date of appointment of undersigned and issue revised Seniority List according to aforementioned order.**

Thanking you in anticipation.


Dated: 16.06.2020

Yours faithfully,


(Syed Musaddiq Shah)
Junior Clerk (Estate Office)
Administration Department

Copy to:

1. PSO to Chief Secretary, Khyber Pakhtunkhwa
2. PS to Secretary Administration Department, Khyber Pakhtunkhwa


16/6/22





(12)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)**

Dated Peshawar, the September 06, 2022

ORDER

No. SO E-IV (E&AD)/ 1-2/2022: - WHEREAS, the appellant Mr. Baz Muhammad Khan was appointed as Chowkidar in Public Health Engineering Department. Upon abolition of Public Health Engineering Department on 01.07.2001, he was declared surplus on 02.03.2002 by the Works & Services / C&W Department and adjusted as Naib Qasid in O/o Chief Engineer, Public Health Engineering Department and then promoted to the post of Junior Clerk (BS-11) vide order dated 27.11.2010.

2. AND WHEREAS, the appellant submitted an application to Secretary, Public Health Engineering Department to forward his application to Establishment Department for his adjustment in Civil Secretariat. His appeal was processed and regretted on the plea that the appellant has been adjusted in light of Surplus Pool Policy and after passing of 14 years of his adjustment has no link with the department where he served before merger on 20.01.2021.

3. AND WHEREAS, aggrieved by the above, he filed Appeal No. 3240/2021 in Khyber Pakhtunkhwa Service Tribunal, with the prayer to set aside order dated 21.01.2021 and regularize the period w.e.f. 31.07.2003 to 23.01.2007 by treating the said period as period spent on duty and also adjust the appellant in the Civil Secretariat.

4. AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal accepted his appeal as prayed vide judgment dated 13.01.2022.

5. AND WHEREAS, the department filed CPLA against the judgment of Khyber Pakhtunkhwa Service Tribunal judgement dated 13.01.2022 which is pending adjudication before the august Supreme Court of Pakistan.

6. AND WHEREAS, the appellant filed Execution Petition No. 2514/2022 in Service Appeal No. 3240/2021 which came for hearing on 07.07.2022; the Tribunal while rejecting to execution petition submitted by the department on behalf of respondents, directed to produce implementation report as ordained in the Tribunal judgment dated 13.01.2022.

7. NOW, THEREFORE, the Secretary Establishment being Appointing Competent Authority, in terms of Rule-4(3)(b)(ii) of Khyber Pakhtunkhwa Civil Servants

13

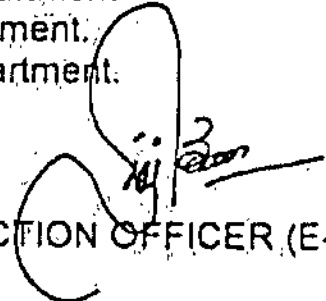
(APT) Rules, 1989 has been pleased to order conditional adjustment of Mr. Baz Muhammad Khan, against the post of Junior Clerk (BS-11), in Establishment Department in compliance to the Khyber Pakhtunkhwa Service Tribunal Judgment dated 13.01.2022 subject to final outcome of the CPLA which is pending adjudication before Supreme Court of Pakistan.

SECRETARY ESTABLISHMENT
GOVT. OF KHYBER PAKHTUNKHWA

Endst: Even No. & Date,

Copy of the above is forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Section Officer (Admin), Administration Department.
3. Section Officer (Secret), Establishment Department.
4. Section Officer (Lit-III), Establishment Department for further necessary action.
5. Section Office (Gen), PHE Department.
6. P.S to Secretary Establishment Department.
7. P.S to Special Secretary (Estt), Establishment Department
8. P.A to Addl: Secretary (Estt), Establishment Department.
9. P.A to Deputy Secretary (Estt), Establishment Department.
10. Official concerned.


SECTION OFFICER (E-IV)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal Peshawar

Syed Mossadiq Shah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

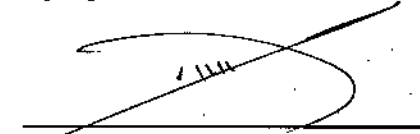
Govt of KP (Respondent)
(Defendant)

I/We, Syed Mossadiq Shah

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC** 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 costs.

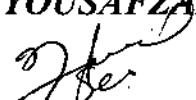
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI, ASC,


SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar